



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 9] नई दिल्ली, फरवरी 21-फरवरी 27, 2010, शनिवार/फाल्गुन 2-फाल्गुन 8, 1931
No. 9] NEW DELHI, FEBRUARY 21-FEBRUARY 27, 2010, SATURDAY/PHALGUNA 2-PHALGUNA 8, 1931

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 15 फरवरी, 2010

का.आ. 548.—भारतीय स्टेट बैंक (समनुषंगी बैंक) अधिनियम, 1959 (1959 का 38) की धारा 26 की उपधारा (2क) के साथ पठित धारा 25 की उपधारा (1) के खण्ड (गख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा, श्री आर. के. साह, उप प्रबंधक, स्टेट बैंक आफ बीकानेर एंड जयपुर को अधिसूचना की तारीख से 31-10-2012 तक की अवधि अर्थात् उनके अधिवर्षिता की आयु प्राप्त करने तक अथवा स्टेट बैंक आफ बीकानेर एंड जयपुर के अधिकारी के रूप में उनके पद छोड़ देने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, स्टेट बैंक आफ बीकानेर एंड जयपुर के निदेशक मण्डल में अधिकारी कर्मचारी निदेशक के रूप में नामित करती है।

[फा. सं. 8/3/2009-बीओ-1]

सुमिता डावरा, निदेशक

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 15th February, 2010

S.O. 548.—In exercise of the powers conferred by clause (cb) of sub-section (1) of Section 25 read with

sub-section (2A) of Section 26 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), the Central Government, after consultation with the Reserve Bank of India, hereby nominates Shri R. K. Shah, Deputy Manager, State Bank of Bikaner & Jaipur, as Officer Employee Director on the Board of Directors of State Bank of Bikaner & Jaipur from the date of notification and for a period upto 31-10-2012 i.e. the date of his attaining the age of superannuation or until he ceases to be an officer the State Bank of Bikaner & Jaipur or until further orders, whichever is the earliest.

[F.No. 8/3/2009-BO.1]

SUMITA DAWRA, Director

नई दिल्ली, 15 फरवरी, 2010

का.आ. 549.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9 के उपखंड (1) और (2) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा (3) के खण्ड (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री प्रदीप कुमार, वरिष्ठ शाखा प्रबंधक को अधिसूचना की तिथि से तीन वर्षों की अवधि के लिए अथवा जब तक वे पंजाब नेशनल बैंक के अधिकारी के रूप में अपना पद नहीं छोड़ देते अथवा अगले

आदेशों तक, जो भी पहले हो, पंजाब नेशनल बैंक के निदेशक मण्डल में अधिकारी कर्मचारी निदेशक के रूप में नामित करती है।

[फा. सं. 9/3/2009-बीओ-1]

सुमिता डावरा, निदेशक

New Delhi, the 15th February, 2010

S.O. 549.—In exercise of the powers conferred by clause (f) of sub-section (3) of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) & (2) of clause 9 of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby nominates Shri Pradeep Kumar, Sr. Branch Manager, Punjab National Bank, as Officer Employee Director on the Board of Directors of Punjab National Bank for a period of three years from the date of notification or until he ceases to be an officer of the Punjab National Bank or until further orders, whichever is the earliest.

[F No. 9/3/2009-BO.I]

SUMITA DAWRA, Director

नई दिल्ली, 15 फरवरी, 2010

का.आ. 550.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9 के उपखंड (1) और (2) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खण्ड (ड) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री राम अवतार शर्मा, कंप्यूटर आपरेटर ए, यूको बैंक को नामित करने की तिथि से तीन वर्षों की अवधि के लिए अथवा जब तक वे यूको बैंक के कर्मकार कर्मचारी के रूप में अपना पद नहीं छोड़ देते अथवा अगले आदेशों तक, जो भी पहले हो, यूको बैंक के निदेशक मण्डल में कर्मकार कर्मचारी निदेशक के रूप में नियुक्त करती है।

[फा. सं. 9/39/2009-बीओ-1]

सुमिता डावरा, निदेशक

New Delhi, the 15th February, 2010

S.O. 550.—In exercise of the powers conferred by clause (e) of sub-section 3 of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) & (2) of clause 9 of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby appoints Shri Ram Avtar Sharma, Computer Operator A, UCO Bank, as Workmen Employee Director on the Board of Directors of UCO Bank for a period of three years from the date of nomination or till he ceases to be a workmen employee of the UCO Bank or until further orders, whichever is the earliest.

[F. No. 9/39/2009-BO.I]

SUMITA DAWRA, Director

नई दिल्ली, 17 फरवरी, 2010

का.आ. 551.—जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय

सरकार, एतद्वारा, श्री आर. गोपालन, सचिव, वित्तीय सेवाएं विभाग को तत्काल प्रभाव से और अगले आदेशों तक, श्री जी. सी. चतुर्वेदी, अपर सचिव, वित्तीय सेवाएं विभाग के स्थान पर उक्त निगम में सदस्य के रूप में नामित करती है।

[फा. सं. 14/3/2003-बीमा-IV]

ललित कुमार, निदेशक (बीमा)

New Delhi, the 17th February, 2010

S.O. 551.—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints Shri R. Gopalan, Secretary, Department of Financial Services vice Shri G. C. Chaturvedi, Additional Secretary, Department of Financial Services as Member of the said Corporation with immediate effect till further orders..

[F.No. 14/3/2003-Ins.IV]

LALIT KUMAR, Director (Insurance)

नई दिल्ली, 18 फरवरी, 2010

का.आ. 552.—बीमा विनियामक और विकास प्राधिकरण अधिनियम, 1999 (1999 का 41) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री राधा कृष्णन नायर, कार्यकारी निदेशक, भारतीय प्रतिभूति और विनियम बोर्ड (सेबी) को बिना आवास और कार सुविधा के, 2.50 लाख रुपए प्रतिमाह के समेकित वेतन पर, पद का कार्यभार ग्रहण करने की तिथि से पांच वर्षों की अवधि के लिए अथवा उनके 62 वर्ष की आयु प्राप्त करने तक अथवा अगले आदेशों तक, जो भी पहले हो, बीमा विनियामक और विकास प्राधिकरण (आईआरडीए) के पूर्णकालिक सदस्य के रूप में नियुक्त करती है।

[फा. सं. 16011/02/2009-बीमा-III]

जे. एस. एस. शास्त्री, उप सचिव

New Delhi, the 18th February, 2010

S.O. 552.—In exercise of the powers conferred by Section 4 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Central Government hereby appoints Shri Radha Krishnan Nair, Executive Director, Securities & Exchange Board of India (SEBI) as Whole-time Member of the Insurance Regulatory and Development Authority (IRDA) on a consolidated salary of Rs. 2.50 lakh per month, without facility of house and car for a period of five years from the date of assumption of charge of the post, or till he attains the age of 62 years or until further orders, whichever is the earliest.

[F.No. R-16011/02/2009-Ins.III]

J.S.S. SASTRY, Dy. Secy.

नई दिल्ली, 18 फरवरी, 2010

का.आ. 553.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9 के उपखंड (1) और (2) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खण्ड (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय रिजर्व बैंक से परामर्श करने के पश्चात, केन्द्रीय सरकार, एतद्वारा, श्री इगनेशियस

मार्शल अलमीदा, प्रबंधक, देना बैंक को अधिसूचना की तिथि से तीन वर्षों की अवधि के लिए और/या 30-11-2012 तक अर्थात् उनकी अधिवर्षिता की आयु होने तक अथवा जब तक वे देना बैंक के अधिकारी के रूप में अपना पद नहीं छोड़ देते अथवा अगले आदेशों तक, जो भी पहले हो, देना बैंक के निदेशक मण्डल में अधिकारी कर्मचारी निदेशक के रूप में नामित करती है।

[फा. सं. 9/10/2009-बीओ-1]

सुमिता डावरा, निदेशक

New Delhi, the 18th February, 2010

S.O. 553.—In exercise of the powers conferred by clause (f) of sub-section (3) of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) & (2) of clause 9 of the Nationalised Banks (Management & Miscellaneous provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby nominates Shri Ignatius Marshal Almeida, Manager, Dena Bank, as Officer Employee Director on the Board of Directors of Dena Bank for a period of three years from the date of notification and/or upto 30-11-2012 i.e. the date of superannuation or until he ceases to be an officer of the Dena Bank or until further orders, whichever is the earliest.

[F.No. 9/10/2009-BO.I]

SUMITA DAWRA, Director

नई दिल्ली, 19 फरवरी, 2010

का.आ. 554.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) योजना, 1970/1980 के खंड 3 के उपखंड (1) तथा खंड 8 के उपखंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, केन्द्रीय सरकार, एतद्वारा, युनाइटेड बैंक आफ इंडिया में मौजूदा महाप्रबंधक के रूप में कार्यरत श्री एस. एल. बंसल (जन्म तिथि) 29-09-1954 को युनाइटेड बैंक आफ इंडिया के कार्यपालक निदेशक के रूप में नियुक्त करती है। श्री बंसल की युनाइटेड बैंक आफ इंडिया के कार्यपालक निदेशक के रूप में होने वाली नियुक्ति उनके द्वारा दिनांक 01-04-2010 को अथवा उसके बाद पद का कार्यभार संभालने की तारीख से प्रभावी होगी और श्री बंसल इस पद पर अधिवर्षिता की आयु प्राप्त करने के महीने की अंतिम तारीख तक अर्थात् 30-09-2014 तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, बने रहेंगे।

[फा. सं. 9/12/2009-बीओ-1]

सुमिता डावरा, निदेशक

New Delhi, the 19th February, 2010

S.O. 554.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of clause 8 of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri S.L. Bansal (DoB : 29-09-1954) presently General Manager, Union Bank of India as Executive Director, United Bank of India with

effect from the date of his taking over charge of the post on or after 01-04-2010 and upto 30-09-2014 i.e. the last day of month in which he would attain the age of superannuation or until further orders, whichever is earlier.

[F.No. 9/12/2009-BO.I]

SUMITA DAWRA, Director

नई दिल्ली, 19 फरवरी, 2010

का.आ. 555.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) योजना, 1970/1980 के खंड 3 के उपखंड (1) तथा खंड 8 के उपखंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा (3) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, केन्द्रीय सरकार, एतद्वारा, युनाइटेड बैंक आफ इंडिया में मौजूदा कार्यपालक निदेशक श्री टी. एम. भसीन (जन्म तिथि 23-05-1956) को श्री एम.एस. सुन्दरराजन, अध्यक्ष एवं प्रबंध निदेशक जो 31-03-2010 को अधिवर्षिता की आयु प्राप्त कर रहे हैं, के स्थान पर इंडियन बैंक के अध्यक्ष एवं प्रबंध निदेशक के रूप में नियुक्त करती है। श्री टी. एम. भसीन की युनाइटेड बैंक आफ इंडिया में अध्यक्ष एवं प्रबंध निदेशक के रूप में होने वाली नियुक्ति उनके द्वारा दिनांक 01-04-2010 को अथवा उसके बाद पद का कार्यभार संभालने की तारीख से पांच वर्षों की अवधि के लिए अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, बने रहेंगे।

[फा. सं. 9/12/2009-बीओ-1]

सुमिता डावरा, निदेशक

New Delhi, the 19th February, 2010

S.O. 555.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of clause 8 of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri T. M. Bhasin (DoB : 23-05-1956) presently Executive Director, United Bank of India as Chairman and Managing Director, Indian Bank in place of Shri M.S. Sunderarajan, CMD, who is attaining the age of superannuation on 31-03-2010, for a period of five years with effect from the date of his taking over charge of the post on or after 01-04-2010 and/or until further orders, whichever is earlier.

[F.No. 9/12/2009-BO.I]

SUMITA DAWRA, Director

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 19 फरवरी, 2010

(आयकर)

का.आ. 556.—जबकि केन्द्र सरकार ने आयकर अधिनियम, 1961 (1961 का 43) (जिसे बाद में उक्त अधिनियम के रूप में संशोधित किया गया) की धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए संख्या का.आ. 11 (अ)

दिनांक 8 जनवरी, 2008 तथा जिसे सं. का.आ. 1605(अ) दिनांक 2 जुलाई, 2008 के तहत संशोधन किया गया, के तहत वित्त मंत्रालय (राजस्व विभाग, केन्द्रीय प्रत्यक्ष कर बोर्ड) में भारत सरकार की अधिसूचना द्वारा औद्योगिक पार्क के लिए एक स्कीम निर्मित एवं अधिसूचित की है;

और जबकि मैसर्स कोल्टे पाटिल डेवलपर्स लिमिटेड, जिसका पंजीकृत पता द्वितीय तल, सिटी प्वाइंट, बोट क्लब रोड, पुणे-411001 में है, ने सर्वे संख्या 198/1 बी, लोहगांव, पुणे, तालुका हवेली, जिला पुणे, महाराष्ट्र (प्रोजेक्ट गीगा स्पेस), [(बिल्डिंग अल्फा-1, अल्फा-2, बीटा-1, बीटा-2, गामा एंड डेल्टा-2)] में एक औद्योगिक पार्क विकसित किया है;

अतः अब आयकर नियमावली, 1962 के नियम 18ग के साथ पठित धारा 80 झ क की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा इस अधिसूचना के अनुबंध में उल्लिखित शर्तों के अधीन मैसर्स कोल्टे पाटिल डेवलपर्स लिमिटेड, पुणे को एक उपक्रम तथा सर्वे संख्या 198/1 बी, लोहगांव, पुणे, तालुका हवेली, जिला पुणे, महाराष्ट्र (प्रोजेक्ट गीगा स्पेस), [(बिल्डिंग अल्फा-1, अल्फा-2, बीटा-1, बीटा-2, गामा एंड डेल्टा-2)] जो उक्त उपक्रम द्वारा विकसित एवं अनुरक्षित तथा प्रचालित की जा रही है, के रूप में खंड (iii) के प्रयोजनार्थ एक औद्योगिक पार्क के रूप में अधिसूचित करती है।

अनुबंध

शर्तें जिन पर मैसर्स कोल्टे पाटिल डेवलपर्स लिमिटेड, पुणे द्वारा एक औद्योगिक पार्क की स्थापना के लिए भारत सरकार का अनुमोदन प्रदान किया गया है।

1. (i) औद्योगिक उपक्रम का नाम कोल्टे पाटिल डेवलपर्स लिमिटेड
- (ii) अवस्थान सर्वे संख्या 198/1 बी, लोहगांव, पुणे, तालुका हवेली, जिला पुणे, महाराष्ट्र (प्रोजेक्ट गीगा स्पेस, [(बिल्डिंग अल्फा-1 अल्फा-2, बीटा-1, बीटा-2, गामा एंड डेल्टा-2)])
- (iii) निर्मित न्यूनतम फर्शी क्षेत्र 15,000 वर्ग मीटर
- (iv) प्रस्तावित औद्योगिक कार्य-कलाप जैसाकि औद्योगिक पार्क स्कीम, 2008 में परिभाषित किया गया है।
- (v) औद्योगिक उपयोग के लिए उद्दिष्ट आबंटन योग्य क्षेत्रफल की प्रतिशतता 75 प्रतिशत अथवा उससे अधिक
- (vi) वाणिज्यिक उपयोग के लिए उद्दिष्ट आबंटन क्षेत्रफल की प्रतिशतता 10 प्रतिशत अथवा उससे कम
- (vii) औद्योगिक उपक्रमों की न्यूनतम 30 यूनिटें संख्या
- (viii) औद्योगिक पार्क के प्रारंभ होने की तिथि 9-5-2007

2. औद्योगिक पार्क को स्थानीय प्राधिकरण से प्रारंभ होने के प्रमाण-पत्र की तिथि जो 9-5-2007 है, को विकसित के रूप में समझा जाएगा।

3. औद्योगिक उपक्रम का एक ही मालिक होना चाहिए।

4. अधिनियम के अन्तर्गत कर लाभ औद्योगिक पार्क में कम से कम तीस यूनिटों के अवस्थापित होने के उपरान्त ही उपक्रम को उपलब्ध होंगे। न्यूनतम संख्या में औद्योगिक यूनिटों की संगणना के लिए किसी व्यक्ति तथा उससे संबद्ध उपक्रमों की सभी यूनिटों को एक यूनिट माना जाएगा।

5. संबद्ध उपक्रम की यूनिटों सहित कोई भी औद्योगिक यूनिट आबंटन योग क्षेत्रफल के पच्चीस प्रतिशत से अधिक का उपभोग नहीं करेगी।

6. अधिनियम के अन्तर्गत कर लाभ इस अधिसूचना के तहत अधिसूचना उपक्रम को ही उपलब्ध होगा तथा न कि किसी अन्य व्यक्ति को जो बाद में अधिसूचित औद्योगिक पार्क किसी कारणवश विकसित कर सकता है, विकसित करता है तथा प्रचालन करता है अथवा अनुरक्षण करता है तथा प्रचालित करता है।

7. औद्योगिक यूनिटें केवल वहीं कार्य-कलाप करेंगी जिन्हें औद्योगिक पार्क स्कीम, 2008 में विनिर्दिष्ट किया गया है।

8. उपक्रम को औद्योगिक पार्क के लिए अलग खाता-बही रखनी चाहिए तथा नियत तिथि तक आयकर विभाग को अपनी आयकर विवरणी दाखिल करनी चाहिए।

9. यह अधिसूचना अमान्य होगी तथा मैसर्स कोल्टे पाटिल डेवलपर्स लिमिटेड ऐसी अमान्यता की किसी भी प्रतिक्रिया के लिए पूरी तरह उत्तरदायी होंगे, यदि

(i) इसके द्वारा दाखिल आवेदन तथा परवर्ती दस्तावेज जिसके आधार पर केन्द्र सरकार द्वारा अधिसूचना जारी की जाती है, में गलत सूचना/मिथ्या जानकारी होती है अथवा कुछ वस्तुगत सूचना इसमें नहीं दी गई होती है,

(ii) यह औद्योगिक पार्क के अवस्थान के लिए है जिसके लिए किसी अन्य उपक्रम के नाम में अधिसूचना पहले ही जारी की जा चुकी है।

10. उपक्रम प्रपत्र आई पी एस-11 में एक वार्षिक रिपोर्ट केन्द्रीय प्रत्यक्ष कर बोर्ड को प्रस्तुत करेगा।

11. इस अधिसूचना में उल्लिखित शर्तों तथा औद्योगिक पार्क स्कीम में शामिल की गई शर्तों का उस अवधि के दौरान पालन किया जाना चाहिए जिसके लिए इस स्कीम के अन्तर्गत लाभ उठाए जाने हैं। केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है, यदि उपक्रम किन्हीं भी शर्तों का पालन करने में असमर्थ होता है।

12. केन्द्र सरकार के अनुमोदन के वित्त परियोजना प्लान में किसी संशोधन अथवा भविष्य में अधिज्ञान अथवा आवेदक द्वारा किसी वस्तुगत तथ्य को प्रकट न करने से औद्योगिक पार्क का अनुमोदन अमान्य हो जाएगा।

[अधिसूचना सं. 10/2010/फा.सं. 178/63/2009-आई टी ए-1]

पदम सिंह, अवर सचिव

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 19th February, 2010

(INCOME-TAX)

S.O. 556.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-1A of the Income-tax Act, 1961

(43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notification of the Government of India in the Ministry of Finance (Department of Revenue, Central Board of Direct Taxes) vide number S.O. 51(E), dated the 8th January, 2008 and amended vide number S.O. 1605(E), dated 2nd July, 2008;

And whereas M/s. Kolte Patil Developers Limited, having its registered address at 2nd Floor, City Point, Boat Club Road, Pune-411001, has developed an Industrial Park at Survey No. 198/1B, Lohgaon, Pune, Taluka Haveli, District Pune, Maharashtra [(Project Giga Space), (Building Alpha-1, Alpha-2, Beta-1, Beta-2, Gamma & Delta-2)];

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-1A of the said Act read with Rule 18 C of the Income Tax Rules, 1962, the Central Government hereby notifies M/s. Kolte Patil Developers Limited, Pune as an undertaking and the project at Survey No. 198/1B, Lohgaon, Pune Taluka Haveli, District Pune, Maharashtra [(Project Giga Space), (Building Alpha-1, Alpha-2, Beta-1, Beta-2, Gamma & Delta-2)], being developed and being maintained and operated by the said undertaking, as an Industrial Park for the purposes of the said clause (iii) subject to the terms and conditions mentioned in the annexure to this notification.

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Kolte Patil Developers Limited, Pune.

1. (i) Name of the Industrial Undertaking : Kolte Patil Developers Limited
- (ii) Location : Survey No. 198/1B, Lohgaon, Pune, Taluka Haveli, District Pune, Maharashtra [(Project Giga Space), (Building Alpha-1, Alpha-2, Beta-1, Beta-2, Gamma & Delta-2)].
- (iii) Minimum Constructed Floor Area : 15,000 Square Meters
- (iv) Proposed industrial activities : As defined in Industrial Park Scheme, 2008
- (v) Percentage of allocable area earmarked for Industrial use : 75% or more
- (vi) Percentage of allocable area earmarked for commercial use : 10% or less
- (vii) Minimum number of industrial units : 30 Units
- (viii) Date of commencement of the industrial Park : 09-05-2007

2. The Industrial Park shall be construed as developed on the date of commencement certificate from the local Authority which is 09-05-2007.
3. The industrial park should be owned by only one undertaking.
4. The tax benefits under the Act will be available to the undertaking only after minimum number of thirty units are located in the Industrial Park. For the purpose of computing the minimum number of industrial units, all units of a person and his associated enterprises will be treated as a single unit.
5. No industrial unit, along with the units of an associated enterprise, shall occupy more than twenty five per cent of the allocable area.
6. The tax benefits under the Act will be available only to the undertaking notified vide this notification and not to any other person who may subsequently develop, develops and operates or maintains and operates the notified industrial park, for any reason.
7. The Industrial units shall undertake only those activities as specified in Industrial Park Scheme, 2008.
8. The undertaking must keep separate books of accounts for the industrial park and must file its income tax returns by the due date to the Income-tax department.
9. The notification will be invalid and M/s. Kolte Patil Developers Limited shall be solely responsible for any repercussions of such invalidity, if
 - (i) The application and subsequently documents furnished by it, on the basis of which the notification is issued by the Central Government contains wrong information/misinformation or some material information has not been provided in it.
 - (ii) it is for the location of the industrial park for which notification has already been issued in the name of another undertaking.
10. The undertaking shall furnish an annual report to the Central Board of Direct Taxes in Form IPS-II.
11. The conditions mentioned in this notification as well as those included in the industrial Park Scheme, 2008 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case the undertaking fails to comply with any of the conditions.
12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 10/2010/F.No. 178/63/2009-ITA-I]

PADAM SINGH, Under Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

नई दिल्ली, 1 फरवरी, 2010

का.आ. 557.—केन्द्रीय सरकार भारतीय दन्त चिकित्सा परिषद से परामर्श करने के बाद दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है; अर्थात्:

2. दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-I में क्रम संख्या 84 के बाद निम्नलिखित प्रविष्टियां रखी जाएंगी :-

85 महर्षि मार्कण्डेश्वर विश्वविद्यालय, मुल्लाना, अंबाला ।
I. महर्षि मार्कण्डेश्वरदंतचिकित्सा विज्ञान और अनुसंधान महाविद्यालय, मुल्लाना, अंबाला

दंत शल्यक्रिया निष्णात

पेरियोडॉन्टिक्स

(यदि यह 23-07-2009 को अथवा उसके उपरान्त प्रदान की गई हो)

ओरल पैथोलॉजी

(यदि यह 23-07-2009 को अथवा उसके उपरान्त प्रदान की गई हो)

ओरल मेडिसीन

(यदि यह 25-07-2009 को अथवा उसके उपरान्त प्रदान की गई हो)

ओरल सर्जरी

(यदि यह 23-07-2009 को अथवा उसके उपरान्त प्रदान की गई हो)

कंजरवेटिव डेंटिस्ट्री

(यदि यह 23-07-2009 को अथवा उसके उपरान्त प्रदान की गई हो)

प्रोस्थोडॉन्टिक्स

(यदि यह 25-07-2009 को अथवा उसके उपरान्त प्रदान की गई हो)

आर्थोडॉन्टिक्स

(यदि यह 25-07-2009 को अथवा उसके उपरान्त प्रदान की गई हो)

सामुदायिक दंत चिकित्सा

(यदि यह 23-07-2009 को अथवा उसके उपरान्त प्रदान की गई हो)

पेडोडॉन्टिक्स

(यदि यह 25-07-2009 को अथवा उसके उपरान्त प्रदान की गई हो)

एम डी एस (पेरियोडॉन्टिक्स),

एम.एम. विश्वविद्यालय, मुल्लाना, अंबाला

एम डी एस (ओरल पैथो.),

एम.एम. विश्वविद्यालय, मुल्लाना, अंबाला

एम डी एस (ओरल मेडिसीन),

एम.एम. विश्वविद्यालय, मुल्लाना, अंबाला

एम डी एस (ओरल सर्जरी),

एम.एम. विश्वविद्यालय, मुल्लाना, अंबाला

एम डी एस (कंजर. डेंट.),

एम.एम. विश्वविद्यालय, मुल्लाना, अंबाला

एम डी एस (प्रोस्थोडॉन्टिक्स),

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एम डी एस (आर्थोडॉन्टिक्स)

एम.एम. विश्वविद्यालय, मुल्लाना, अंबाला

एम डी एस (सामु. दंत चिकित्सा),

एम.एम. विश्वविद्यालय, मुल्लाना, अंबाला

एम डी एस (पेडोडॉन्टिक्स),

एम.एम. विश्वविद्यालय, मुल्लाना, अंबाला

[सं. वी.12017/22/2005-डी ई]

आर. शंकरन, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

New Delhi, the 1st February, 2010

S.O. 557.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with the Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely:-

In Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) after Serial No. 84, the following Serial number and entries shall be inserted, namely:—

85 Maharishi Markandeshwar
University, Mullana, Ambala

**I. M.M. College of Dental Sciences
& Research, Mullana, Ambala
Master of Dental Surgery**

- Periodontics

(if granted on or after 23-07-2009)

- Oral Pathology

(if granted on or after 23-07-2009)

MDS (Perio.), M.M. University,
Mullana, AmbalaMDS (Oral Path.), M.M. University,
Mullana, Ambala

- Oral Medicine (if granted on or after 25-07-2009)	MDS (Oral Medicine), M.M. University, Mullana, Ambala
- Oral Surgery (if granted on or after 23-07-2009)	MDS (Oral Surgery), M.M. University, Mullana, Ambala
- Conservative Dentistry (if granted on or after 23-07-2009)	MDS (Cons. Dent.), M.M. University, Mullana, Ambala
- Prosthodontics (if granted on or after 25-07-2009)	MDS (Prosth.), M.M. University, Mullana, Ambala
- Orthodontics (if granted on or after 25-07-2009)	MDS (Ortho.), M.M. University, Mullana, Ambala
- Community Dentistry (if granted on or after 23-07-2009)	MDS (Comm. Dent.), M.M. University, Mullana, Ambala
- Pedodontics (if granted on or after 25-07-2009)	MDS (Pedo.), M.M. University, Mullana Ambala.

[No. V. 12017/22/2005-DE]

R. SANKARAN, Under Secy.

नई दिल्ली, 3 फरवरी, 2010

का.आ. 558.—केंद्रीय सरकार दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है; अर्थात्:—

2. दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-I में बरकातुल्लाह विश्वविद्यालय, भोपाल, मध्य प्रदेश द्वारा प्रदत्त डेंटल डिग्रियों को मान्यता देने के संबंध में क्रम संख्या 69 के सामने स्तंभ 2 और 3 की मौजूदा प्रविष्टियों में निम्नलिखित प्रविष्टियां उसके अंतर्गत रखी जाएंगी :—

“III पीपल डेंटल एकडमी, भोपाल

(i) बैचरल आफ डेंटल सर्जरी
(जब 05-11-2009 को या उसके बाद प्रदान की गई हो)

बी. डी. एस., बरकातुल्लाह विश्वविद्यालय,
भोपाल”।

[सं. वी.-12017/4/2004-डी ई]

आर. शंकरन, अवर सचिव

-New Delhi, the 3rd February, 2010

S.O. 558.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with the Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

2. In the existing entries of columns 2 & 3 against Serial No. 69, in Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) pertaining to recognition of dental degrees awarded by Barkatullah University, Bhopal, Madhya Pradesh, the following entries shall be inserted thereunder :—

“III People's Dental Academy, Bhopal

(i) Bachelor of Dental Surgery
(if granted on or after 05-11-2009)

BDS, Barkatullah University,
Bhopal”.

[No. V.-12017/4/2004-DE]

R. SANKARAN, Under Secy.

नई दिल्ली, 8 फरवरी, 2010

का.आ. 559.—केन्द्रीय सरकार भारतीय दन्त चिकित्सा परिषद से परामर्श करने के बाद दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है; अर्थात्:—

2. दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-I में डॉ. बी. आर. अम्बेडकर विश्वविद्यालय, आगरा द्वारा प्रदत्त डेंटल डिग्रियों को मान्यता देने के संबंध में क्रम संख्या 58 के सामने स्तंभ 2 और 3 की मौजूदा प्रविष्टियों में निम्नलिखित प्रविष्टियां उसके अंतर्गत रखी जाएंगी :—

“डी. जे. कॉलेज ऑफ डेंटल साइंसेस एंड रिसर्च, मोदीनगर

(ii) दंत शल्य चिकित्सा निष्णात

कंसर्वेटिव डेंटिस्ट्री
(यदि यह 24-5-2009 को अथवा उसके उपरान्त प्रदान की गई हो)

एम. डी. एस. (कंसर्वेटिव डेंटिस्ट्री), डॉ. बी. आर. अम्बेडकर विश्वविद्यालय, आगरा।

मुख्य शल्य चिकित्सा
(यदि यह 23-5-2009 को अथवा उसके उपरान्त प्रदान की गई हो)

एम. डी. एस. (ओरल सर्जरी), डॉ. बी. आर. अम्बेडकर विश्वविद्यालय, आगरा

[सं. वी. 12017/76/2005-डी ई]

आर. शंकरन, अवर सचिव

New Delhi, the 8th February, 2010

S.O. 559.—In exercise of the powers conferred by sub-section (2) of section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with the Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely:-

2. In the existing entries of columns 2 & 3 against Serial No.58, in Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) pertaining to recognition of dental degrees awarded by Dr. B.R. Ambedkar University, Agra, the following entries shall be inserted thereunder :—

“D.J. College of Dental Sciences & Research, Modinagar

(ii) Master of Dental Surgery

Conservative Dentistry
(if granted on or after 24-5-2009)

MDS (Conservative Dentistry), Dr. B.R. Ambedkar University, Agra.

Oral Surgery
(if granted on or after 23-5-2009)

MDS (Oral Surgery), Dr. B.R. Ambadkar University, Agra”.

[No. V. 12017/76/2005-DE]

R. SANKARAN, Under Secy.

नई दिल्ली, 8 फरवरी, 2010

का.आ. 560.—केन्द्रीय सरकार भारतीय दन्त चिकित्सा परिषद् से परामर्श करने के बाद दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा उक्त अधिनियम की अनुसूची के भाग-1 में निम्नलिखित संशोधन करती है; अर्थात्:—

2. दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-1 में कन्नूर विश्वविद्यालय, कन्नूर के संबंध में क्रम संख्या 76 के सामने स्तंभ 2 और 3 की मौजूदा प्रविष्टियों में पेरियाराम डेंटल कॉलेज, कन्नूर के संबंध में निम्नलिखित प्रविष्टियां उसके अंतर्गत रखी जाएंगी :—

“III पेरियाराम डेंटल कॉलेज, कन्नूर

(i) दंत शल्य चिकित्सा स्नातक
(यदि यह 22-5-2009 को अथवा उसके उपरान्त प्रदान की गई हो)

बी. डी. एस., कन्नूर विश्वविद्यालय, कन्नूर”।

[सं. वी. 12017/9/2002-डी ई]

आर. शंकरन, अवर सचिव

New Delhi, the 8th February, 2010

S.O. 560.—In exercise of the powers conferred by sub-section (2) of section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with the Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely:—

2. In the existing entries of columns 2 & 3 against Serial No.76, in Part -I of the Schedule to the Dentists Act, 1948 (16 of 1948) pertaining to Kannur University, Kannur, the following entries in respect of Pariyaram Dental College, Kannur shall be inserted thereunder :—

“III Pariyaram Dental College, Kannur

(i) Bachelor of Dental Surgery
(if granted on or after 22-5-2009)

BDS Kannur University, Kannur”.

[No. V. 12017/9/2002-DE]

R. SANKARAN, Under Secy.

नई दिल्ली, 11 फरवरी, 2010

का.आ. 561.—केन्द्रीय सरकार ने भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उप-धारा (1) के खण्ड (क) के अनुसरण में और केरल सरकार से परामर्श करने के बाद डॉ. पी. सी. केशवनकुट्टी नायर, ‘अलकनंदा’, टीसी 1/1986-1, कुमारपुरम, तिरुवनंतपुरम को दिनांक 3-4-2010 से पांच वर्षों के लिए भारतीय आयुर्विज्ञान परिषद् के सदस्य के रूप में मनोनीत किया है।

अतः अब उक्त अधिनियम की धारा 3 की उप-धारा (1) के उपबंध के अनुसरण में, केन्द्र सरकार एतद्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में “धारा 3 की उप-धारा (1) के खण्ड (क) के अधीन मनोनीत” शीर्षक के अंतर्गत क्रम संख्या 3 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :—

“3 डॉ. पी. सी. केशवनकुट्टी नायर, • केरल सरकार”
‘अलकनंदा’, टीसी 1/1986-1,
कुमारपुरम, तिरुवनंतपुरम

[सं. वी. 11013/18/2009-एम ई (नीति-1)]

के. वी. एस. राव, उप सचिव

New Delhi, the 11th February, 2010

S.O. 561.—Whereas the Central Government, in pursuance of clause (a) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956), and in consultation with the Government of Kerala have nominated Dr. P. C. Kesavankutty Nayar, 'Alakananda' TC 1/1986-1, Kumarapuram, Thiruvanthapuram to be a member of the Medical Council of India for five years with effect from 3-4-2010.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138 dated the 9th January, 1960, namely :—

In the said Notification, under the heading, "Nominated under clause (a) of sub-section (1) of Section 3", against serial number 3, the entries shall be substituted by the following :—

"3. Dr. P. C. Kesavankutty Nayar Government of Kerala"
 'Alakananda' TC 1/1986-1
 Kumarapuram
 Thiruvanthapuram.

[No. V. 11013/8/2009-ME (P-I)]

K. V. S. RAO, Dy. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 8 फरवरी, 2010

का.आ. 562.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खण्ड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानकों में संशोधन किया गये हैं :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 15658 : 2006	1, जनवरी 2010	4-2-2010

इन संशोधनों की प्रतियां भारतीय मानक ब्यूरो मानक भवन, 9, बहादुर शाह जफर मार्ग नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : सीईडी/राजपत्र]

ए. के. सैनी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 8th February, 2010

S.O. 562.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies the amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. and year of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1	IS 15658 : 2006	1, January, 2010	4-2-2010

Copy of these amendments are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: CED/Gazette]

A. K. SAINI, Sc 'F' & Head (Civil Eng.)

नई दिल्ली, 9 फरवरी, 2010

का.आ. 563.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खण्ड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक(को) में संशोधन किया गया/किये गये हैं :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 15636 : 2005 स्वचल वाहन-व्यावसायिक वाहनों के लिये वातिल टायर आड़ी और रेडियल प्लाई-विशिष्ट	संशोधन संख्या 2 दिसम्बर, 2009	31 दिसम्बर, 2009

इस संशोधनों की प्रतियाँ भारतीय मानक ब्यूरो मानक भवन 9 बहादुर शाह जफर मार्ग नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : टी ई डी/जी-16]

टी. वी. सिंह, वैज्ञानिक ई एवं प्रमुख (टी ई डी)

New Delhi, the 9th February, 2010

S.O. 563.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies the amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. years & title of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1	IS 15636 : 2005 Automotive vehicles-Pneumatic tyres for commercial vehicles-Diagonal and radial ply-Specification	Amendment No. 2 December, 2009	31 December, 2009

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: TED/G-16]

T. V. SINGH, Scientist E & Head (Transport Engg.)

नई दिल्ली, 10 फरवरी, 2010

का.आ. 564.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खण्ड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक(को) में संशोधन किया गया/किये गये हैं :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 3043 : 1987 की संशोधन संख्या 1	2 जनवरी, 2010	31-1-2010

इन संशोधनों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : ईटी 20/टी-6]

आर. के. त्रेहन, वैज्ञानिक ई एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 10th February, 2010

S.O. 564.—In pursuance of clause (b) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies the amendments to the Indian Standard, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. and year of the Indian Standards	No. and year of the Amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
1	IS 3043 : 1987 Code of practice for Earthing (First revision)	2 January, 2010	31-1-2010

Copy of these amendment is available with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: ET 20/T-6]

R. K. TREHAN, Scientist E & Head (Electrotechnical)

नई दिल्ली, 12 फरवरी, 2010

का.आ. 565.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानकों के विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गए हैं :-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	2.आईएस 15907 : 2010 कृषि वस्त्रादि जीवाशु वृद्धि हेतु उच्च घनत्व वाले पालीइथाईलीन (एच.डी.पी.ई.) के बुने हुए क्यारीनुमा बिस्तर -विशिष्ट	शून्य	फरवरी 2010

इस भारतीय मानक की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली- 110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : टीएक्सडी/जी-25]

पी. भटनागर, वैज्ञानिक 'ई' एवं प्रमुख (टीएक्सडी)

New Delhi, the 12th February, 2010

S.O. 565.—In pursuance of clause (b) of sub-rule (1) of Rule, 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard particulars of which is given in the Schedule hereto annexed has been established on the date indicated against it :

SCHEDULE

Sl. No. and Year of the Indian No. Standard Established	No. and Year of Indian Standard, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)
1. IS 15907: 2010 Agro Textiles- High Density Polyethylene (HDPE) Woven Beds For Vermiculture Specification	NIL	February 2010

Henceforth, this standards will be available for sale.

Copy of this Standard is available for sale with R.Q. at Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and its Regional Offices at New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices at Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahti, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: TXD/G-25]

P. BHATNAGAR, Sc. 'E' & Head (Textiles)

नई दिल्ली, 12 फरवरी, 2010

का.आ. 566.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :-

अनुसूची

क्रम संशोधित भारतीय मानक (कों) की संख्या संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)
1. आईएस/आईएसओ 11951: 1995 टिन प्लेट या विद्युत अपघटन द्वारा क्रोमियम आक्साइड-लेपित इस्पात के उत्पादन हेतु अतप्त बेल्लित कुंडली-कृत ब्लैकप्लेट	-	30-04-2009

इस भारतीय मानकों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादूर शाह जफर मार्ग, नई दिल्ली- 110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एमटीडी 4/टी-24]

पी. घोष, वैज्ञानिक 'ई' एवं प्रमुख (एमटीडी)

New Delhi, the 12th February, 2010

S.O. 566.— In pursuance of clause (b) of sub-rule (1) of Rule, 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. and Year of the Indian Standards Established	No. and Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS/ISO 11951: 1995 Cold-reduced blackplate in coil form for the production of tinplate or eletrolytic chromum/chromium oxide-coated steel	Nil.	30-04-2009

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolcatta Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guawahti, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: MTD 4/T-24]

P. GHOSH, Sc. 'E' & Head (Met Engg.)

नई दिल्ली, 15 फरवरी, 2010

का.आ. 567.— भारतीय मानक ब्यूरो नियम, 1987 के नियम, 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :—

अनुसूची

क्रम संख्या	स्थापित वर्ष और शीर्षक	भारतीय मानक (कों) की संख्या	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)	
1.	आईएस 15840: 2009 झीलों और जलाशयों में जल के आयतन और जलस्तर का निर्धारण करना	-		31-07-2009

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : डब्ल्यू आर डी 10/टी-14]

जे. सी. अरोड़ा, वैज्ञानिक 'ई' एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 15th February, 2010

S.O. 567.— In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	Title and Year of the Indian Standard Established	No. and Year of Indian Standard, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 15840: 2009 Determination of Volume of Water and Water Level in Lakes and Reservoirs	—	31st July '09

Copy of this Standard is available for sale with the Bureau of Indian Standards Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: WRD 10/T-14]

J. C. ARORA, Scientist 'E' & Head (Water Resources Deptt.)

नई दिल्ली, 15 फरवरी, 2010

का.आ. 568— भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :-

अनुसूची

क्रम संख्या	स्थापित वर्ष और शीर्षक	भारतीय मानक (कों) की संख्या	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)	
1.	आईएस 15840: 2009 झीलों और जलाशयों में जल के आयतन और जलस्तर का निर्धारण करना	—		31-07-2009

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादूर शाह जफर मार्ग, नई दिल्ली- 110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : डब्लू आर डी 10/टी-14]

जे. सी. अरोड़ा, वैज्ञानिक 'ई' एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 15th February, 2010

S.O. 568.— In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	Title and Year of the Indian Standards Established	No. and Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 15840 : 2009 Determination of Volume of Water and Water Level in Lakes and Reservoirs	---	31st July, 09

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: WRD 10/T-14]

J. C. ARORA, Scientist 'E' & Head (Water Resources Deptt.)

नई दिल्ली, 17 फरवरी, 2010

का. आ. 569.— केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप नियम (4) के अनुसरण में उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय के अधीन भारतीय मानक ब्यूरो, नई दिल्ली के निम्नलिखित शाखा कार्यालय, जिनके 80% से अधिक अधिकारियों/कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है:—

भारतीय मानक ब्यूरो,

शाखा कार्यालय देहरादून,

सी 43, सेक्टर -I

डिफेंस कालोनी, देहरादून-428001, उत्तराखण्ड।

[संख्या ई-11012/3/2005-हिन्दी]

इन्दु अनिल, संयुक्त सचिव (रा.भा.)

New Delhi, the 17th February, 2010

S.O. 569.— In pursuance of Sub-Rule (4) of the Rule 10 of the Official languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notifies the following Branch Office of the Bureau of Indian Standards, New Delhi under the Ministry of Consumer Affairs, Food and Public Distribution where more than 80% of the staff have acquired working knowledge of Hindi:—

Bureau of Indian Standards,

Branch Office Dehradun,

C-43, Sector-I Defene Colony,

Dehradun-428001,

Uttarakhand.

[No. E-11012/3/2005-Hindi]

INDU ANIL, Jt. Director (O.L.)

नई दिल्ली, 19 फरवरी, 2010

का. आ. 570.— भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के उपनियम (5) के विनियम 4 के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा. मा. संख्या	भाग	अनुभाग	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	7988418	26-11-2009	नेशनल पाइप्स, प्लॉट नं. एन-2, एमआईडीसी, तालुका अहमदनगर, जिला अहमदनगर-414111 महाराष्ट्र ।	इमीटिंग पाइप सिस्टम	13488			2008
2	7990304	4-12-2009	ओमसाईराम स्टील्स एंड एलॉय प्रा. लि., प्लॉट नं. एफ1, एफ2, एफ3, एफ8, एफ9 और एफ 10 फेज 11, अतिरिक्त एमआयडीसी, जिला जालना-431203 महाराष्ट्र ।	कंक्रीट प्रबलन के लिए उच्च सामर्थ्य विकसित इस्पात की छड़ें और तारें	1786			2008
3	7990405	2-12-2009	गर्ग आयर्नाक्स लिमिटेड प्लॉट नं. जी-4, राजंजगांव एमआयडीसी तालुका शिरूर, जिला पुणे-412220 महाराष्ट्र ।	सामान्य इंजीनियर प्रयोजना हेतु मृदु इस्पात तार		280		2006
4	7991609	14-12-2009	पोपटलाल वेलचंद शाह 309, तलेगांव धामधीरे तालुका शिरूर, जिला पुणे-412208 महाराष्ट्र ।	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी-शुद्धता एवं मुहरांकन ।		1417		1999
5	7991811	14-12-2009	श्रीमान ज्वैलर्स ए/पी कोरेगांव भीमा तालुका शिरूर, जिला पुणे-412207 महाराष्ट्र ।	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी-शुद्धता एवं मुहरांकन ।		1417		1999
6	7991912	14-12-2009	उमदेमल पूनमचंद सराफ 88ए, ऐरेवडा, जिला पुणे-411006 महाराष्ट्र ।	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी-शुद्धता एवं मुहरांकन ।		1417		1999
7	7991710	15-12-2009	किमाय अंजुआप्योर स.नं. 127, कर्वे रोड, तालुका हवेली, जिला पुणे-411029 महाराष्ट्र ।	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)		14543		2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
8.	7993512	22-12-2009	श्री सिद्धिविनायक इस्पात प्रा. लि. प्लॉट नं. एल 9, अतिरिक्त एमआईडीसी एरिया, जिल्हा सातारा-415004 महाराष्ट्र ।	गर्म रोलड कम, मध्यम और उच्च तन्यता संरचनात्मक इस्पात		2062		2006
9.	7993613	23-12-2009	मनोरमा रोय्स इंडिया प्रा.लि. शेड नं. 1,2,3,4 और 5 प्लॉट नं. 6ए से 13 ए और एफ, एम, एन, 100, भारतियम इंड, इस्टेट शेत जिल्हा परभणी-431503 महाराष्ट्र ।	पॉलीप्रोपलीन रस्सियां (3-स्ट्रॉंड हॉजर लैंड और 8-स्ट्रॉंड प्लेटेड)		5175		1992
10.	7993608	24-12-2009	भालेराव फूड्स एंड बेवरेजेज प्रा. लि. प्लॉट नं. 67-68, इंद्रायणी इस्टेट, एट तकवे बीकें पीओ वडगांव मावल, तालुका मावल जिल्हा पुणे-412106 महाराष्ट्र ।	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)		14543		2004

[सं. सी एम डी/13:11]

सी. के. महेश्वरी, वैज्ञानिक 'जी' (प्रमाणन)

New Delhi, the 19th February, 2010

S.O. 570.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :—

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name & Address of the Party	Title of the Standard	IS No.	Part	Section	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	7988418	16-11-2009	National Pipes Plot No. N-2 MIDC Tiduka Ahmednagar District Ahmednagar-414111 Maharashtra	Emitting pipe system	13488			2008
2.	7990304	4-12-2009	Omsairam Steels & Alloys Pvt. Ltd. Plot No. F1, F2, F3, F8, F9 & F10 Phase II, Addl. MIDC District Jalna-431203 Maharashtra	High strength deformed steel bars and wires for concrete reinforcement	1786			2008

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
3.	7990405	2-12-2009	Garg Inox Ltd. Plot No. G4 Ranjangaon MIDC Taluka Shirur, District Pune-412220 Maharashtra	Mild steel wire for general engineering purposes	280			2006
4.	7991609	14-12-2009	Popatlal Velchand Shah 309, Talegaon Dhamdhare Taluka Shirur, District Pune-412208 Maharashtra	Gold and gold alloys, jewellery/artefacts- Fineness and marking	1417			1999
5.	7991811	14-12-2009	Shreeman Jewellers A/P Koregaon Bhima, District Pune-412207 Maharashtra	Gold and gold alloys, jewellery/artefacts- Fineness and marking	1417			1999
6.	7991912	14-12-2009	Umedmal Punamchand Saraf 88A, Yerwada Pune-411006 Maharashtra	Gold and gold alloys, jewellery/artefacts- Fineness and marking	1417			1999
7.	7991710	15-12-2009	Kimaya Aquapure S.No. 127, Karve Road Taluka Haveli, District Pune-411029 Maharashtra	Packaged drinking water (Other than packaged natural mineral water)	14543			2004
8.	7993512	22-12-2009	Shree Siddhivinayak Ispat Pvt. Ltd. Plot No. L-9, Addl. MIDC Area District Satara-415004 Maharashtra	Hot rolled low, medium and high tensile structural steel	2062			2006
9.	7993613	23-12-2009	Manorama Ropes India Pvt. Ltd. Shed No. 1,2,3, 4 & 5 Plot No. 6A to 13A & F S.No. 100, Municipal Indl Estate Selu District Parbhani-431503 Maharashtra	Polypropylene ropes (3-strand hawser laid and 8-strand plaited)	5175			1992
10.	7975308	24-12-2009	Bhalerao Foods & Beverages Pvt. Ltd. Plot No. 67-68 Indrayani Estate, At Takwe Bk PO Vadgaon Maval Taluka Maval, District Pune-412106 Maharashtra	Packaged drinking water (Other than packaged natural mineral water)	14543			2004

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 22 फरवरी, 2010

का. आ. 571.— पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) के नियम 2 (क) के अन्तर्गत, मैसर्स गिलायम गैस ट्रान्सपोर्टेशन इंफ्रास्ट्रक्चर लिमिटेड (आर.जी.टी. आई.एल.) के द्वारा महाराष्ट्र राज्य में प्राकृतिक गैस पाइपलाइन बिछाई जाने हेतु सक्षम प्राधिकारी के कार्यों का निर्वहन करने के लिए, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की, भारत के राजपत्र दिनांक 22 जनवरी, 2005 को प्रकाशित, अधिसूचना का०आ० 259 दिनांक 18 जनवरी, 2005 द्वारा पदस्थापित, में, एस.डी.भिस, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) नियमावली, 1963 के नियम 4 के उप नियम (1) के नीचे दी गई व्याख्या (1) के अन्तर्गत अधिकारों के अनुपालन में, मैसर्स आर.जी.टी.आई.एल., जिसमें यथास्थित, उस क्षेत्र में भूमि में उपयोग का अधिकार निहित किया गया है और उस क्षेत्र में पाइपलाइन का स्वामित्व निहित है, के परामर्श से, संलग्न अनुसूची के स्तंभ 4 में महाराष्ट्र राज्य के पुणे, अहमदनगर और रायगड जिले में यथा उल्लेखित प्राकृतिक गैस पाइपलाइन बिछाए जाने के प्रचालन की समाप्ति की तारीखों की घोषणा करता हूँ।

अनुसूची

तहसिल: खेड		जिला: पुणे		राज्य: महाराष्ट्र
क. स.	ग्राम का नाम	धारा 6(1) की का. आ. संख्या एवं दिनांक		प्रचालन की समाप्ति की तारीख
1	2	3		4
1	पिंपळगाव तर्फे खेड	1606	दिनांक 27/04/2005	4/12/2009
		1055	दिनांक 09/04/2007	
		1333(अ)	दिनांक 22/05/2009	
		2862(अ)	दिनांक 9/11/2009	
2	काळूस	1606	दिनांक 27/04/2005	4/12/2009
		1055	दिनांक 09/04/2007	
		1333(अ)	दिनांक 22/05/2009	
		2862(अ)	दिनांक 9/11/2009	
3	वाकी वुडगुवा	1606	दिनांक 27/04/2005	4/12/2009
		1055	दिनांक 09/04/2007	
		1333(अ)	दिनांक 22/05/2009	
		2862(अ)	दिनांक 9/11/2009	
4	वाकी खुर्द	1606	दिनांक 27/04/2005	4/12/2009
		2862(अ)	दिनांक 9/11/2009	
5	गेहकल	1606	दिनांक 27/04/2005	4/12/2009
		2862(अ)	दिनांक 9/11/2009	
6	कोरेगाव खुर्द	1606	दिनांक 27/04/2005	4/12/2009
		1333(अ)	दिनांक 22/05/2009	
		2862(अ)	दिनांक 9/11/2009	
7	शेलू	1606	दिनांक 27/04/2005	4/12/2009
		1333(अ)	दिनांक 22/05/2009	
		2862(अ)	दिनांक 9/11/2009	
8	करजविहार	1606	दिनांक 27/04/2005	4/12/2009
		1333(अ)	दिनांक 22/05/2009	
		2862(अ)	दिनांक 9/11/2009	

1	2	3		4
	तहसिल : मावळ	जिला : पुणे		राज्य : महाराष्ट्र
1	मिडेवाडी	1606	दिनांक 27/04/2005	4/12/2009
		1333(अ)	दिनांक 22/05/2009	
		2862(अ)	दिनांक 9/11/2009	
2	वधलवाडी	1606	दिनांक 27/04/2005	4/12/2009
		1055	दिनांक 09/04/2007	
		1333(अ)	दिनांक 22/05/2009	
		2862(अ)	दिनांक 9/11/2009	
3	नवलाख उब्रे	1606	दिनांक 27/04/2005	4/12/2009
		1055	दिनांक 09/04/2007	
		1333(अ)	दिनांक 22/05/2009	
		2862(अ)	दिनांक 9/11/2009	
4	कशाळ	1606	दिनांक 27/04/2005	4/12/2009
		1333(अ)	दिनांक 22/05/2009	
		2862(अ)	दिनांक 9/11/2009	
5	इंगळून	1606	दिनांक 27/04/2005	4/12/2009
		1333(अ)	दिनांक 22/05/2009	
		2862(अ)	दिनांक 9/11/2009	
6	कुणेवाडी	1606	दिनांक 27/04/2005	4/12/2009
		1333(अ)	दिनांक 22/05/2009	
		2862(अ)	दिनांक 9/11/2009	
7	मावळे	1606	दिनांक 27/04/2005	4/12/2009
		1055	दिनांक 09/04/2007	
		1333(अ)	दिनांक 22/05/2009	
		2862(अ)	दिनांक 9/11/2009	
तहसिल : शिरूर		जिला : पुणे		राज्य : महाराष्ट्र
1	पिपळमुटी	2322	दिनांक 27/06/2005	4/12/2009
		1056	दिनांक 09/04/2007	
		1188(अ)	दिनांक 06/05/2009	
		3070(अ)	दिनांक 30/11/2009	
2	शिरमगाव काटा	2322	दिनांक 27/06/2005	4/12/2009
		1056	दिनांक 09/04/2007	
		1188(अ)	दिनांक 06/05/2009	
		3070(अ)	दिनांक 30/11/2009	
3	कांकडेवाडी	2322	दिनांक 27/06/2005	4/12/2009
		1056	दिनांक 09/04/2007	
		1188(अ)	दिनांक 06/05/2009	
		3070(अ)	दिनांक 30/11/2009	
4	न्हावरे	2322	दिनांक 27/06/2005	4/12/2009
		1056	दिनांक 09/04/2007	
		2841(अ)	दिनांक 02/12/2008	
		1188(अ)	दिनांक 06/05/2009	
		3070(अ)	दिनांक 30/11/2009	
5	उरळगाव	2322	दिनांक 27/06/2005	4/12/2009
		1056	दिनांक 09/04/2007	
		1188(अ)	दिनांक 06/05/2009	
		3070(अ)	दिनांक 30/11/2009	

1	2	3	4
6	दहिवडी	2322 दिनांक 27/06/2005 1056 दिनांक 09/04/2007 1188(अ) दिनांक 06/05/2009 3070(अ) दिनांक 30/11/2009	4/12/2009
7	टाकली भिमा	2322 दिनांक 27/06/2005 1056 दिनांक 09/04/2007 1188(अ) दिनांक 06/05/2009 3070(अ) दिनांक 30/11/2009	4/12/2009
8	तळेगाव हमदेरे	2322 दिनांक 27/06/2005 1056 दिनांक 09/04/2007 1188(अ) दिनांक 06/05/2009 3070(अ) दिनांक 30/11/2009	4/12/2009
9	कामागी	2322 दिनांक 27/06/2005 1056 दिनांक 09/04/2007 1188(अ) दिनांक 06/05/2009 3070(अ) दिनांक 30/11/2009	4/12/2009
10	शिकापूर	2322 दिनांक 27/06/2005 1056 दिनांक 09/04/2007 2841(अ) दिनांक 02/12/2008 1188(अ) दिनांक 06/05/2009 3070(अ) दिनांक 30/11/2009	4/12/2009
11	जातेगाव खुर्द	2322 दिनांक 27/06/2005 1188(अ) दिनांक 06/05/2009 3070(अ) दिनांक 30/11/2009	4/12/2009
12	करंदी	2322 दिनांक 27/06/2005 1056 दिनांक 09/04/2007 1188(अ) दिनांक 06/05/2009 3070(अ) दिनांक 30/11/2009	4/12/2009
13	वाजेवाडी	2322 दिनांक 27/06/2005 1056 दिनांक 09/04/2007 1188(अ) दिनांक 06/05/2009 3070(अ) दिनांक 30/11/2009	4/12/2009

तहसिल: कर्जत	जिला: अहमदनगर	राज्य: महाराष्ट्र
1 शेगुडवाडी	2236 दिनांक 21/06/2005 1097 दिनांक 19/04/2007 1186(अ) दिनांक 05/05/2009 2863(अ) दिनांक 9/11/2009	4/12/2009
2 खानगाव	2236 दिनांक 21/06/2005 1097 दिनांक 19/04/2007 2863(E) दिनांक 9/11/2009	4/12/2009

1	2	3		4
3	आंबीजळगाव	2236	दिनांक 21/06/2005	4/12/2009
		1097	दिनांक 19/04/2007	
		1186(अ)	दिनांक 05/05/2009	
		2863(अ)	दिनांक 9/11/2009	
4	कौंगगाव	2236	दिनांक 21/06/2005	4/12/2009
		1097	दिनांक 19/04/2007	
		1186(अ)	दिनांक 05/05/2009	
		2863(अ)	दिनांक 9/11/2009	
5	कुभेफळ	2236	दिनांक 21/06/2005	4/12/2009
		1186(अ)	दिनांक 05/05/2009	
		2863(अ)	दिनांक 9/11/2009	
6	वेनवडी	2236	दिनांक 21/06/2005	4/12/2009
		1097	दिनांक 19/04/2007	
		1186(अ)	दिनांक 05/05/2009	
		2863(अ)	दिनांक 9/11/2009	
7	थेगवडी	2236	दिनांक 21/06/2005	4/12/2009
		1097	दिनांक 19/04/2007	
		1186(अ)	दिनांक 05/05/2009	
		2863(अ)	दिनांक 9/11/2009	
8	दुंगगाव	2236	दिनांक 21/06/2005	4/12/2009
		1097	दिनांक 19/04/2007	
		1186(अ)	दिनांक 05/05/2009	
		2863(अ)	दिनांक 9/11/2009	
9	दहिवडी	4337	दिनांक 10/11/2006	4/12/2009
		2846(अ)	दिनांक 4/11/2009	
		2847(अ)	दिनांक 4/11/2009	
10	गक्षमवाडी बुद्रक	4337	दिनांक 10/11/2006	4/12/2009
		1057	दिनांक 09/04/2007	
		2846(अ)	दिनांक 4/11/2009	
		2847(अ)	दिनांक 4/11/2009	
11	गक्षमवाडी खुर्द	2236	दिनांक 21/06/2005	4/12/2009
		1097	दिनांक 19/04/2007	
		1186(अ)	दिनांक 05/05/2009	
		2863(अ)	दिनांक 9/11/2009	

तहसिल: श्रीगोंदा		जिला: अहमदनगर		राज्य: महाराष्ट्र
1	चांडगाव	2236	दिनांक 21/06/2005	4/12/2009
		1186(अ)	दिनांक 05/05/2009	
		2863(अ)	दिनांक 9/11/2009	

1	2	3	4
2	टाकली कडवाली	2236 दिनांक 21/06/2005 1097 दिनांक 19/04/2009 1186(अ) दिनांक 05/05/2009 2863(अ) दिनांक 9/11/2009	4/12/2009
3	भिगण	2236 दिनांक 21/06/2005 1097 दिनांक 19/04/2009 1186(अ) दिनांक 05/05/2009 2863(अ) दिनांक 9/11/2009	4/12/2009
4	लिपणगाव	2236 दिनांक 21/06/2005 1186(अ) दिनांक 05/05/2009 2863(अ) दिनांक 9/11/2009	4/12/2009
5	जंगलेवाडी	2236 दिनांक 21/06/2005 1186(अ) दिनांक 05/05/2009 2863(अ) दिनांक 9/11/2009	4/12/2009
6	काष्टी	2236 दिनांक 21/06/2005 1097 दिनांक 19/04/2009 1186(अ) दिनांक 05/05/2009 2863(अ) दिनांक 9/11/2009	4/12/2009

तहसिल: कर्जत	जिला: रायगड	राज्य: महाराष्ट्र
1 गौळवाडी	2237 दिनांक 21/06/2005 1187(अ) दिनांक 06/05/2009 2844(अ) दिनांक 4/11/2009	4/12/2009
2 वजार्वाडी	2237 दिनांक 21/06/2005 1187(अ) दिनांक 06/05/2009 2844(अ) दिनांक 4/11/2009	4/12/2009
3 टाकवे	2237 दिनांक 21/06/2005 1187(अ) दिनांक 06/05/2009 2844(अ) दिनांक 4/11/2009	4/12/2009
4 नरमापूर	2237 दिनांक 21/06/2005 2844(अ) दिनांक 4/11/2009	4/12/2009
5 वजार्पाडा	2237 दिनांक 21/06/2005 2844(अ) दिनांक 4/11/2009	4/12/2009
6 कोंडिवले	2237 दिनांक 21/06/2005 1187(अ) दिनांक 06/05/2009 2844(अ) दिनांक 4/11/2009	4/12/2009
7 अचमरे	2237 दिनांक 21/06/2005 1187(अ) दिनांक 06/05/2009 2844(अ) दिनांक 4/11/2009	4/12/2009

पेट्रोलियम और ग्रनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन)
अधिनियम, 1962 की धारा 17 के अंतर्गत संग्रहित पेट्रोलियम और ग्रनिज
पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) नियम, 1963 के नियम
4 के अंतर्गत भारत सरकार के गजपत्र में प्रकाशनाथ

[फा. सं. एल. 14014 8 2010 जी.पी.]

मोह. पी. मदान, अवर सचिव

Ministry of Petroleum and Natural Gas

New Delhi, the 22th February, 2010

S. O. 571.—In pursuance of powers conferred by Explanation 1 in sub-rule (1) of Rule 4 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Rules, 1963, I, **S. D. Bhise**, appointed by Government of India, Ministry of Petroleum and Natural Gas vide Notification S.O. 259 dated 18th January, 2005 (published in the Gazette of India on 22nd January, 2005) under Section 2(a) of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) to perform the functions of Competent Authority for laying natural gas pipelines by M/s Reliance Gas Transportation Infrastructure Limited (RGTIL) in the State of Maharashtra, in consultation with M/s RGTIL, to whom the Right of User in land in that area has been vested and in whom the ownership of pipeline in that area vests, hereby declare the dates, mentioned in Column 4 of the Schedule annexed herewith, as the dates of termination of RoU operation in Districts Pune, Ahmednagar and Raigad in the State of Maharashtra.

Schedule

Tahsil: Khed		District: Pune		State: Maharashtra
Sr. No.	Village	S.O. No. & Date of Notification Under sub-section (1) of Section 6		Date of Termination of Operation
1	2	3		4
1	Pimpalgaon Tarf Khed	1606	Date 27/04/2005	4/12/2009
		1055	Date 09/04/2007	
		1333(E)	Date 22/05/2009	
		2862(E)	Date 9/11/2009	
2	Kalus	1606	Date 27/04/2005	4/12/2009
		1055	Date 09/04/2007	
		1333(E)	Date 22/05/2009	
		2862(E)	Date 9/11/2009	
3	Waki Budruk	1606	Date 27/04/2005	4/12/2009
		1055	Date 09/04/2007	
		1333(E)	Date 22/05/2009	
		2862(E)	Date 9/11/2009	
4	Waki Khurd	1606	Date 27/04/2005	4/12/2009
		2862(E)	Date 9/11/2009	
5	Rohakkal	1606	Date 27/04/2005	4/12/2009
		2862(E)	Date 9/11/2009	
6	Koregaon Khurd	1606	Date 27/04/2005	4/12/2009
		1333(E)	Date 22/05/2009	
		2862(E)	Date 9/11/2009	

1	2	3	4
7	Shelu	1606 Date 27/04/2005 1333(E) Date 22/05/2009 2862(E) Date 9/11/2009	4/12/2009
8	Kranjevihire	1606 Date 27/04/2005 1333(E) Date 22/05/2009 2862(E) Date 9/11/2009	4/12/2009
Tahsil: Maval		District: Pune	State: Maharashtra
1	Mendewadi	1606 Date 27/04/2005 1333(E) Date 22/05/2009 2862(E) Date 9/11/2009	4/12/2009
2	Badalwadi	1606 Date 27/04/2005 1055 Date 09/04/2007 1333(E) Date 22/05/2009 2862(E) Date 9/11/2009	4/12/2009
3	Navalakh Umbare	1606 Date 27/04/2005 1055 Date 09/04/2007 1333(E) Date 22/05/2009 2862(E) Date 9/11/2009	4/12/2009
4	Kashal	1606 Date 27/04/2005 1333(E) Date 22/05/2009 2862(E) Date 9/11/2009	4/12/2009
5	Inglun	1606 Date 27/04/2005 1333(E) Date 22/05/2009 2862(E) Date 9/11/2009	4/12/2009
6	Kunewadi	1606 Date 27/04/2005 1333(E) Date 22/05/2009 2862(E) Date 9/11/2009	4/12/2009
7	Savale	1606 Date 27/04/2005 1055 Date 09/04/2007 1333(E) Date 22/05/2009 2862(E) Date 9/11/2009	4/12/2009
Tahsil: Shirur		District: Pune	State: Maharashtra
1	Pimpaisuti	2322 Date 27/06/2005 1056 Date 09/04/2007 1188(E) Date 06/05/2009 3070(E) Date 30/11/2009	4/12/2009
2	Shirasgaon Kata	2322 Date 27/06/2005 1056 Date 09/04/2007 1188(E) Date 06/05/2009 3070(E) Date 30/11/2009	4/12/2009
3	Kokadewadi	2322 Date 27/06/2005 1056 Date 09/04/2007 1188(E) Date 06/05/2009 3070(E) Date 30/11/2009	4/12/2009

1	2	3	4
4	Nhavare	2322 Date 27/06/2005 1056 Date 09/04/2007 2841(E) Date 02/12/2008 1188(E) Date 06/05/2009 3070(E) Date 30/11/2009	4/12/2009
5	Uralgaon	2322 Date 27/06/2005 1056 Date 09/04/2007 1188(E) Date 06/05/2009 3070(E) Date 30/11/2009	4/12/2009
6	Dahiwadi	2322 Date 27/06/2005 1056 Date 09/04/2007 1188(E) Date 06/05/2009 3070(E) Date 30/11/2009	4/12/2009
7	Takil Bhima	2322 Date 27/06/2005 1056 Date 09/04/2007 1188(E) Date 06/05/2009 3070(E) Date 30/11/2009	4/12/2009
8	Talegaon Damdhare	2322 Date 27/06/2005 1056 Date 09/04/2007 1188(E) Date 06/05/2009 3070(E) Date 30/11/2009	4/12/2009
9	Kasari	2322 Date 27/06/2005 1056 Date 09/04/2007 1188(E) Date 06/05/2009 3070(E) Date 30/11/2009	4/12/2009
10	Shikrapur	2322 Date 27/06/2005 1056 Date 09/04/2007 2841(E) Date 02/12/2008 1188(E) Date 06/05/2009 3070(E) Date 30/11/2009	4/12/2009
11	Jategaon Khurd	2322 Date 27/06/2005 1188(E) Date 06/05/2009 3070(E) Date 30/11/2009	4/12/2009
12	Karandi	2322 Date 27/06/2005 1056 Date 09/04/2007 1188(E) Date 06/05/2009 3070(E) Date 30/11/2009	4/12/2009
13	Wajewadi	2322 Date 27/06/2005 1056 Date 09/04/2007 1188(E) Date 06/05/2009 3070(E) Date 30/11/2009	4/12/2009

Tahsil: Karjat		District: Ahmednagar			State: Maharashtra
1	Shegudwadi	2236	Date	21/06/2005	4/12/2009
		1097	Date	19/04/2007	
		1186(E)	Date	05/05/2009	
		2863(E)	Date	9/11/2009	

1	2	3	4	
2	Khatgaon	2236	Date 21/06/2005	4/12/2009
		1097	Date 19/04/2007	
		2863(E)	Date 9/11/2009	
3	Ambijalgaon	2236	Date 21/06/2005	4/12/2009
		1097	Date 19/04/2007	
		1186(E)	Date 05/05/2009	
		2863(E)	Date 9/11/2009	
4	Koregaon	2236	Date 21/06/2005	4/12/2009
		1097	Date 19/04/2007	
		1186(E)	Date 05/05/2009	
		2863(E)	Date 9/11/2009	
5	Kumbhephal	2236	Date 21/06/2005	4/12/2009
		1186(E)	Date 05/05/2009	
		2863(E)	Date 9/11/2009	
6	Benwadi	2236	Date 21/06/2005	4/12/2009
		1097	Date 19/04/2007	
		1186(E)	Date 05/05/2009	
		2863(E)	Date 9/11/2009	
7	Therwadi	2236	Date 21/06/2005	4/12/2009
		1097	Date 19/04/2007	
		1186(E)	Date 05/05/2009	
		2863(E)	Date 9/11/2009	
8	Durgaon	2236	Date 21/06/2005	4/12/2009
		1097	Date 19/04/2007	
		1186(E)	Date 05/05/2009	
		2863(E)	Date 9/11/2009	
9	Dhalwadi	4337	Date 10/11/2006	4/12/2009
		2846(E)	Date 4/11/2009	
		2847(E)	Date 4/11/2009	
10	Rakshaswadi Budruk	4337	Date 10/11/2006	4/12/2009
		1057	Date 09/04/2007	
		2846(E)	Date 4/11/2009	
		2847(E)	Date 4/11/2009	
11	Rakshaswadi Khurd	2236	Date 21/06/2005	4/12/2009
		1097	Date 19/04/2007	
		1186(E)	Date 05/05/2009	
		2863(E)	Date 9/11/2009	
Tahsil: Shrigonda District: Ahmednagar State: Maharashtra				
1	Chandgaon	2236	Date 21/06/2005	4/12/2009
		1186(E)	Date 05/05/2009	
		2863(E)	Date 9/11/2009	

1	2	3	4
2	Taklikadewalit	2236 Date 21/06/2005 1097 Date 19/04/2009 1186(E) Date 05/05/2009 2863(E) Date 9/11/2009	4/12/2009
3	Bhingaon	2236 Date 21/06/2005 1097 Date 19/04/2009 1186(E) Date 05/05/2009 2863(E) Date 9/11/2009	4/12/2009
4	Limpangaon	2236 Date 21/06/2005 1186(E) Date 05/05/2009 2863(E) Date 9/11/2009	4/12/2009
5	Jangalwadi	2236 Date 21/06/2005 1186(E) Date 05/05/2009 2863(E) Date 9/11/2009	4/12/2009
6	Kashti	2236 Date 21/06/2005 1097 Date 19/04/2009 1186(E) Date 05/05/2009 2863(E) Date 9/11/2009	4/12/2009

Tahsil: Karjat		District: Raigad		State: Maharashtra
1	Goulwadi	2237	Date 21/06/2005	4/12/2009
		1187(E)	Date 06/05/2009	
		2844(E)	Date 4/11/2009	
2	Vanjarwadi	2237	Date 21/06/2005	4/12/2009
		1187(E)	Date 06/05/2009	
		2844(E)	Date 4/11/2009	
3	Takve	2237	Date 21/06/2005	4/12/2009
		1187(E)	Date 06/05/2009	
		2844(E)	Date 4/11/2009	
4	Nasrapur	2237	Date 21/06/2005	4/12/2009
		2844(E)	Date 4/11/2009	
5	Vanjarpada	2237	Date 21/06/2005	4/12/2009
		2844(E)	Date 4/11/2009	
6	Kondowali	2237	Date 21/06/2005	4/12/2009
		1187(E)	Date 06/05/2009	
		2844(E)	Date 4/11/2009	
7	Avsare	2237	Date 21/06/2005	4/12/2009
		1187(E)	Date 06/05/2009	
		2844(E)	Date 4/11/2009	

To be published under Rule 4 of the P & M P (ARUL)

Rules 1963, framed under Section 17 of P & MP (ARUL)

Act, 1962 in official Gazette of India.

[E. No. L-14014/8/2010 G.P.]
SNEH P. MADAN, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 28 जनवरी, 2010

का.आ. 572.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स ऐलिटालिया लाइनी एरी इटालियन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 2, मुम्बई के पंचाट (संदर्भ संख्या 45/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2010 को प्राप्त हुआ था।

[सं. एल-20012/21/2008-आई.आर.(सीएम-1)]

स्नेह लता जवास, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 28th January, 2010

S.O. 572.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 45/2008) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s Alitalia Liance Aeree Italiani and their workman, which was received by the Central Government on 28-1-2010.

[No. I.-20012/21/2008-IR(CM-1)]

SNEHLATA JAWAS, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT : A. A. LAD, Presiding Officer****Reference No. CGIT-2/45 of 2008**Employers in relation to the Management of
M/s Alitalia Linee Italiane, SPA

The General Manager,
M/s. Alitalia Linee Aeree Italiane, SPA
5th floor, CG House, Dr. Annie Besant Road,
Prabhadevi, Mumbai-400025 —First Party

V/s

Their Workman

Ms. Vidya Suvama,
A-33/34, Eversweet Building,
Jay Prakash Road, Andheri (W),
Mumbai 400 053. —Second Party

APPEARANCE

For the Employer : No appearance

For the Workman : Mr. Mohan Bir Singh,
Advocate

Date of passing the Award : 21-12-2009

AWARD

The matrix of the facts as culled out from the proceedings are as under :

1. The Government of India, Ministry of Labour by its Order No.I.-11012/21/2008-IR(CM-1) dated 14th July, 2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

“(i) Whether the action of the management of M/s. Alitalia Linee Aaliene S.P.A., Mumbai in dismissing the services of Ms. Vidya Suvama, Flight Interpreter-cum-Commercial Attendant w.e.f. 8-11-2007 is justified and legal? (ii) To what relief is the concerned workman entitled?”

2. Claim Statement is filed by the 2nd Party at Exhibit 6. Though Claim Statement was filed, Written Statement is not filed by the 1st Party, hence order to proceed ex-parte was passed directing 2nd Party to lead evidence.

3. Accordingly, 2nd Party filed affidavit at Exhibit 9, in lieu of her examination-in-chief, which remained unchallenged.

4. Here 2nd Party dispute the termination dated 8-11-2007 stating that it is illegal and 1st party cannot terminate her. She made out the case by filing Claim Statement at Exhibit 6 and in support of it she filed affidavit at Exhibit 9 in lieu of her examination-in-chief. All this remained unchallenged. Relying on that, I conclude that, the termination under challenged dated 8-11-2007 is illegal and require to quash and set aside. Hence, the order :

ORDER

- (a) Reference is allowed;
- (b) Dismissal order dated 8-11-2007 is hereby quashed and set aside;
- (c) 1st Party is directed to reinstate the concerned workman Ms. Vidya Suvama as a Flight Interpreter-cum-Commercial Attendant with benefits of back wages and continuity of service;
- (d) 1st Party is directed to implement this order immediately;
- (e) No order as to its costs.

Bombay, 21st December, 2009

A. A. LAD, Presiding Officer

नई दिल्ली, 28 जनवरी, 2010

AWARD—PART II

का.आ. 573.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स जेट एयरवेज के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 2, मुम्बई के पंचाट (संदर्भ संख्या 54/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2010 को प्राप्त हुआ था।

[सं. एल-11012/34/2003-आई.आर. (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 28th January, 2010

S.O. 573.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 54/2003) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Jet Airways and their workman, which was received by the Central Government on 28-1-2010.

[No. L-11012/34/2003-IR(C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT : A. A. LAD, Presiding Officer****Reference No. CGIT-2/54 of 2003****Employers in Relation to the Management of
M/s. Jet Airways**

The General Manager (HR),
M/s. Jet Airways (I) Pvt. Ltd;
41/42, Maker Chambers-III,
Nariman Point,
Mumbai 400021

—First Party

V/s.

Their Workmen

The General Secretary,
Bhartiya Kamgar Karmachari Mahasangh,
9, Navalkar Lane, 1st floor,
Prathana Samaj, Girgaum,
Mumbai 400004

—Second Party

APPEARANCE

For the Employer : Mr. Abhay Kulkarni, Advocate.

For the Workmen : Mr. A. P. Kulkarni, Advocate.

Date of reserving the Award : 30-10-2009

Date of passing the Award : 21-12-2009.

The matrix of the facts as culled out from the proceedings are as under :—

1. The Government of India, Ministry of Labour by its Order No.L-11012/34/2003-IR(C-I) dated 20th August, 2003 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the management of M/s. Jet Airways (India) Pvt. Ltd., to dismiss Shri Sunil Sonu Satale, JA/2453/BOM from service w.e.f. 7-8-2002 is legal and justified? If not, to what relief is the workman entitled?”

2. Claim Statement is filed by the 2nd Party at Exhibit 6 by the Union making out case that, concerned workman Sunil Sonu Satale joined first party as a Labour-cum-Cleaner in Cabin Appearance Department on 5-5-1993. He was served with charge-sheet dated 1-12-2001 on allegation of absenteeism without permission or sanction. The allegation levelled against concerned workman was absence without sanction of first party. The case of the Union is that, the allegations in the charge-sheet are cooked up by the 1st Party against concerned workman. No opportunity was given to the concerned workman to explain about his absenteeism. The Enquiry Officer was biased. Inquiry Officer gave perverse findings and did not consider the documents given by second party. The case of the Union is that, alleged misconduct of absenteeism was not of that serious nature which deserve punishment of removal of the employee from employment. The decision taken by 1st Party was taken just to remove the workman from the employment. So it is submitted that, the enquiry shown conducted against concerned workman be declared not fair and proper and finding perverse on which basis he was terminated.

3. This is disputed by the 1st Party by filing reply at Exhibit 8 making out case that, reference is not maintainable. It is stated that, concerned workman was taken as Loader-cum-Cleaner in Cabin Appearance Department. He did not perform his duties satisfactorily. He was not punctual in his work. By charge sheet dated 1-12-2001, charge of 40 days absenteeism between the period 1-6-2001 to 30-9-2001 was levelled against him. Enquiry was conducted by following principles of natural justice and by giving full opportunity to workman. Even opportunity was given to concerned workman to make his submission and put up his defence. He was also allowed to lead evidence and after considering the evidence, the Inquiry Officer gave findings holding him guilty of misconduct of absenteeism. Since concerned workman was not interested in the work and was in habit of remaining absent unauthorized

frequently, it is submitted that dismissal issued against him does not require interference.

(4) Union filed rejoinder at Exhibit 10 denying the allegations of 1st Party and repeating same story as stated in Claim Statement.

(5) In view of the above pleadings Issues were framed at Exhibit 17, out of those Issues No. 1 and 2 were decided, which were on the point of fairness of enquiry and perversity of findings of the Enquiry Officer, by passing Award 1 dated 26-6-2008, holding enquiry fair, proper and finding not perverse.

(6) Now remaining Issues are taken for consideration which I answer as follows :

ISSUES	FINDINGS
(3) Is termination legal ?	No
(4) If not, what relief Workman entitled to?	Reinstatement without backwages.
(5) What order?	As per order Passed below.

REASONS

ISSUE No. 3

(7) Against-the concerned workman charge of habitual absenteeism was levelled vide charge sheet dated 1-12-2001 alleging that, he remained absent for 40 days from June, 2001 to September, 2001. According to 1st party he is habitual of remaining absent. He remained absent during the above period without reason and without sanction as well as without prior intimation. According to 1st party enquiry was conducted and finding was given by the Enquiry Officer holding him guilty of the charge of habitual absenteeism. On the basis of the said finding, 1st Party decided to terminate his services. Whereas case of the 2nd Party is that, punishment given on 40 days absenteeism of dismissal is not just and proper and it is shockingly disproportionate.

(8) To prove that, 2nd Party placed reliance on his affidavit filed for second time in this proceedings at Exhibit 26, where he claims that, he was not having habit of remaining absent. It is his case that as and when he remained absent there was cause behind absenteeism and reason and without reason he did not remain absent. He alleges that, he had intimated that to the 1st party on phone but it was not considered. According to him, he had reason to remain absent. In the cross he admits that, he was dismissed previously also on the allegation of stealing money donated by the passengers. He admits that, he was reinstated at the request of the Union. He admits that, he assured Management that he will improve his habit. He admits that, he has not produced any documentary evidence in the

enquiry to show that, he had reason to remain absent from the employment. On that evidence only 2nd Party claims that, punishment given of dismissal for absenteeism for 40 days between June, 2001 to September, 2001 is disproportionate. It worth to be note that, no evidence was led by 1st Party to refute the evidence led by 2nd Party. Even Advocate for the 2nd Party produced number of citations on the point that if no evidence is lead then case of the otherside need not to consider viz. citation published in 1956 AIR (Bom) page 251 of our Hon'ble High Court in the case of Pirgonda Hongonda vs. Vishwanath Ganesh & ors; citation published in AIR 1999 SC page 1341 of Apex Court in the case of Ishwar Bhai C. Patel vs. Harihar Bchera, citation published in AIR 1999 SC page 1441 of Apex Court in the case of Vidhyadhar vs. Manikar and anr., citation published in 2001 II CLR page 155 of our Hon'ble High Court in the case of Northcote Nursing Home Pvt. Ltd., Bombay and anr. vs. Zarine H. Rahina (Dr.) (Mrs.) and anr. and citation published in 1990 II CLR page 24 of our Hon'ble High Court in the case of Sudhakar S/o. Shankar Dahake vs. The Additional Registrar, High Court, Bombay & ors.

(9) As far as ratio laiddown in above judgments is concerned it is not disputed by 1st party also. Even fact is that no evidence is led by 1st party to deny the contentions taken by the 2nd Party in the affidavit. However, evidence not led by the 1st Party or non-examination of witness by 1st Party. I think it does not make any difference since 2nd Party admits that, no evidence was led by him before the Enquiry Officer to substantiate his case that, he has reason to remain absent. No doubt he has produced number of Xerox copies in this file with Exhibit 13 from pages 28 to 37. However, authors of the said documents are not produced before this Tribunal nor before the Enquiry Officer to prove those documents. In the absence of evidence of author of these documents said cannot be taken in evidence as it is. Even for that, 1st party's Advocate placed reliance on citation published in 1999 LAB I.C. page 1659 in the case of Vernon Lobo vs. Himalaya Drug Company, Mumbai and anr. where our Hon'ble High Court observed that, non-examination of the Doctor who issued medical certificate, produced before the Tribunal does not have any substance and said evidence has no validity in the eye of the law.

(10) So taking into consideration all these facts this I am of the view that, evidence led by 2nd Party in the form of documents without examining author of the said documents has no meaning. Even non-examination of the 1st Party's witnesses in the light of case made out by 2nd Party by filing affidavit for second time in these proceedings at Exhibit 26 does not make much difference.

(11) The fact is that, 2nd Party remained absent. On perusal of the enquiry proceedings, more precisely

admissions given by the concerned workman at page 10 of the enquiry proceedings produced with Exhibit 13 reveals that, he has no evidence to show that, he informed the 1st Party about his absenteeism. It reveals that, he admits that, he has no evidence to show that 1st Party was aware of his absenteeism or 1st Party was made known or knowing reason of his absenteeism. When that is the situation and when admittedly 2nd Party remained absent without intimation in my considered view, 1st Party has reason to punish the 2nd Party workman.

(12) But here question is whether for 40 days absenteeism attract the decision of dismissal and whether it is proper is a core point to be considered.

(13) Here admittedly 2nd Party remained absent for 16 days in June, 2001, 9 days in July, 2001, 7 days in August, 2001 and 8 days in September, 2001. He did not remain absent continuously. He remained absent for 40 days from June, 2001 till September, 2001. Definitely his absenteeism was without application and without intimation to the 1st Party. It is true that, his absenteeism was without prior permission and even might have affected on the services of the 1st Party as providing service was the only business of the 1st Party to the customers who are travelling thought it. Definitely this absenteeism must have affected. Still core question arise, whether dismissal of service is permissible which is the capital punishment in Labour law for 40 days absenteeism of dismissal ?

(14) Number of citations are referred by 1st Party's Advocate to show that, this Tribunal cannot interfere in the administrative decision taken by 1st party since there was a finding of the Enquiry Officer and since the said decision was taken by holding enquiry and on the basis of the finding given by the Enquiry Officer. He placed reliance on the citation published in 2001 I CLR page 643 of our Hon'ble High Court in the case of Air India vs. N.P. Wadkar, which in my considered view is on different point as in that case, 'Approval' was the question to decide. Besides in that case despite the charge of absenteeism number of other charges of habitual absence were levelled against the workman involved in that case. There was a charge of late coming on 65 occasions. Even previous record of the concerned workman in that case was echoing same voices of late coming. Even charge of not attending work punctually was also levelled against the workman involved in that case and there was no quarrel on that point in that case. However, in the case before us there is only isolated incident/charge which is of absenteeism of 40 days. Though previously he was terminated but it was on different type of charge. Previously he was dismissed on the ground of theft and was reinstated when Union intervened in the termination of the concerned workman. However, the termination which is under challenge is termination on

the point of absenteeism and it cannot lead us to say that it is habitual absenteeism as happened in the case of Air India vs. N.P. Wadkar (Supra) published in 2001 I CLR page 643. 1st Party also placed reliance on the citation published in 2001 III CLR page 286 of our Hon'ble High Court in the case of NRC Ltd. vs. NRC Employees Union where evidence led by the concerned workman in that case was not reliable. Besides, workman even in that case remained absent for 52 days in May, 1993 and November, 1993 and charge of habitual absenteeism was proved against that concerned workman. Whereas in our case only charge of absenteeism against the workman involved in the reference was the only charge no other charges as happened in the case of NRC Ltd. vs. NRC Employees Union (supra). Besides 1st Party's Advocate placed reliance on the citation published in 2007 III CLR page 632 of our Hon'ble High Court in the case of Tata Engineering and Locomotive Co. Ltd. vs. Suhas Madhukar Mulay and anr. However, facts of that case are different than the case at hand. In that case there was prolonged absenteeism coupled with his past record which was of similar type but in a case at hand, concerned workman does not have that much bad record as happened in the case of Tata Engineering and Locomotive Co. Ltd. vs. Suhas Madhukar Mulay and anr. published in 2007 III CLR page 632 (supra). Even same can be observed in respect of citation referred by 1st Party's Advocate published in 1998 I CLR page 834 of Kerala High Court in the case of Udambanchola Estate Workers Union vs. Indian Candamom Research Institute where there was a past record of same type on which action was taken by the employer on the basis of the past record of the workman involved in that case. Against that, case of the 2nd Party before us is that, punishment was given on such isolated absenteeism which does not feel just and proper and even does not appear proportionate one, for that he placed reliance on citation published in 1996 I CLR page 1079 of our Hon'ble High Court in the case of Richardson & Cruddas (1972) Ltd. vs. Association of Engineering Workers & ors., citation published in 1996 I CLR page 453 of our Hon'ble High Court in the case of BEST Workers Union, Bombay vs BEST Undertaking and ors., citation published in 1990 II CLR page 24 of our Hon'ble High Court in the case of Sudhakar s/o Shankar Dahake vs. The Additional Registrar, High Court, Bombay & ors., citation published in 2008 AIR SCW page 2099 in the case of Pepsu Road Transport Corporation vs. Rawel Singh, citation published in 2008 AIR SCW page 3460 in the case of Mavji C Lakum vs. Central Bank of India. With the help of these rulings 2nd Party submit that, punishment of dismissal is disproportionate and this Tribunal has power to interfere in the punishment under Section 11 A of the Industrial Disputes Act, 1947.

(15) Here admittedly charge of absenteeism of 40 days was leveled against the concerned workman and the

same was proved. Except said charge of absenteeism, there was no other charge of absenteeism leveled against him by the 1st party or the previous history of the concerned workman. No doubt previously he was dismissed but it was on different ground of theft, so that cannot be treated as past record which led 1st Party to take action of termination treating it as past record in this case.

(16) As stated above charge of absenteeism of 40 days was leveled against him and that too between June, 2001 to September, 2001. That was the only charge in which concerned workman remained absent during his employment. No other occasion is shown by 1st Party that he was having that habit and remained absent like this even on previous occasions. But definitely isolated incident of absenteeism does not empower 1st Party to say that, he is having habit of remaining absent and was not punctual in the employment.

(17) Exhibit 26, affidavit of 2nd Party, reveals that, he is charged for his isolated incident of absenteeism and on that he was terminated. According to me said is not just and proper and said punishment is disproportionate. No doubt 1st Party has power to punish 2nd Party and the Standing Order permit 1st Party to treat absenteeism against its employee of this type under Standing Order No.26. As per that, in case of absenteeism punishment of Censor, warning etc. is available. Said absenteeism does not invite 1st Party to give capital punishment or dismissal. So according to me punishment of dismissal is against standing order applicable to the workmen and is harsh one though 1st Party has power to punish 2nd Party on charge of absenteeism.

(18) As stated above, definitely punishment of dismissal is harsh one. Still standing Order 26 empowers 1st Party to punish 2nd Party Workman that means 1st Party has reason to take action against 2nd Party and it has taken accordingly. However, it is challenged and when 2nd Party succeeds in showing that, it is excessive which in my considered view, 1st Party must quash it and reinstate him on his post which was held by him at the time of his termination dated 7-8-2002.

(19) At the same time I am of the view that, 2nd Party is not entitled for back wages since 1st Party has reason to take action and even 1st Party has conducted enquiry and after conducting enquiry 1st Party punished 2nd party. However, said punishment as observed is not just and proper. Though 1st Party has power to punish. Even Standing Order 26 empower 1st Party to take action but as stated above action taken is excessive. So in my considered view said termination order is liable to be quashed and set aside with the directions to 1st Party to reinstate the 2nd Party without back wages.

(20) Even it is not the case of the 2nd Party also that, he is not employed. It is not the case of the 2nd party that, there is financial loss to his family after his termination nor any case of that type is made out by 2nd Party. Even 1st Party is silent on the point of gainful employment of the 2nd Party.

(21) Fact remains that, 2nd Party did not work for the 1st Party. When he did not work for 2nd party after 2002 till this date, in my considered view he is not entitled for back wages from that date till to-day. Hence, the order:

ORDER

- (a) Reference is partly allowed;
- (b) Termination order dated 7-8-2002 is hereby quashed and set aside with directions to 1st Party to reinstate 2nd Party Sunil Sonu Satale on his post which he was holding on 7-8-2002, without back wages;
- (c) 1st Party is directed to implement this order at the earliest;
- (d) No order as to its costs.

Bombay, 21st December, 2002

A. A. LAD, Presiding Officer

गई १८ दिसंबर, २०१०

का.आ. 574.---औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार एयर इंडिया लिमिटेड के प्रबंधकों के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 2, मुंबई के पंचाट (संदर्भ संख्या 53/2001) को प्रकाशित करती है, जो केंद्रीय सरकार को 28-1-2010 को प्राप्त हुआ था।

[सं. एल 11012/15/2001-आईआर (सी-1)]

सुनेद लता जवास, डेस्क अधिकारी

New Delhi, the 28th January, 2010

S.O. 574.---In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 53/2001) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Air India Ltd. and their workman, which was received by the Central Government on 28-01-2010.

[No. L-11012/15-2001-IR(C-I)]

SUNEIL LATA JAWAS, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. 2, MUMBAI****PRESENT : A. A. LAD, Presiding Officer****Reference No. CGIT-2/53 of 2001****Employers in Relation to the Management of
Air India Limited****(Now National Aviation Co. of India Ltd.)**Establishment Division,
H. R. D. Department, Old Airport,
Santacruz (East),
Mumbai-400029**First Party**

V/s.

There WorkmenAnil Kumar Mavjibhai Solanki,
Loader, Staff No. 44300,
Shantinagar, Chawl No. 29/3,
Shane Guruji Road, Mahalaxmi,
Mumbai-400011**Second Party****APPEARANCE**

For the Employer : Mr. L. L. D'Souza, Representative

For the Workmen : Mr. Ashok Shetty &
Mrs. P. A. Shetty, Advocates

Date of reserving the Award : 16-12-2009

Date of passing the Award : 22-12-2009.

AWARD PART II

The matrix of the facts as culled out from the proceedings are as under :

1. The Government of India, Ministry of Labour by its Order No.L-11012/15/2001-C-1 dated 27th April, 2001 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Management of M/s. Air India Limited in dismissing Sh. Anil Solanki from its the workman entitled?"

2. To support the subject matter referred in the reference, Second Party filed the Statement of Claim at Exhibit-7 making out the case that, wife of 2nd Party filed petition in Family Court at Bandra. It is contended that, Family Court directed 2nd Party to pay maintenance Rs.500/- per month. It is contended that, since his wife was not happy with the order, she contacted 1st Party's officers making complaints about him. He states that, his wife was abusing him in filthy language in the presence of other colleagues

and threatened to murder him. It is contended that, as a result he was avoiding and remain absent on which enquiry was initiated against him by the 1st Party about his absenteeism. He claims that, she was not aware of it and did not attend it. It is contended that, he admits that, charge sheet was served on him dated 8th June, 1998, however, due to severe health problem did not reply it. It is contended that, he learnt that, enquiry was conducted on 3 dates and proceeded ex-parte. It is contended that, since he was mentally sick due to the situation he unable to take proper steps. It is contended that, even he was not aware of the dates of the said enquiry and its sittings. It is contended that, on meager charge of absenteeism, 1st Party cannot take such a decision of dismissal. So it is prayed that, the enquiry initiated be declared not conducted by following principles of natural justice and findings given by it are perverse.

(3) This was objected by the 1st party by filing Written Statement at Exhibit 8 stating that, 2nd Party remained absent for 189 days from May, 1997 to May, 1998. He did not communicate reason behind his absenteeism. It is contended that, he did not apply for leave in advance and get it sanctioned before proceeding on leave. It is contended that, against his name, there is remark "absent without leave" which invite 1st Party to form enquiry committee which issued charge sheet. It is contended that charge sheet was served on 2nd Party and he was asked to attend enquiry. It is contended that, since he did not attend enquiry. Enquiry Officer proceeded further with the enquiry against 2nd Party as he did not take note of it, and participated in the enquiry. It is contended that, as a result of it the Enquiry Officer conducted 4 sittings. It is contended that, since noting was stated about the absenteeism of the 2nd Party, Enquiry Officer concluded charges proved against 2nd Party and gave finding. It is stated that, full opportunity was given to the 2nd Party. It is stated that, opportunity was given by the purposely remained absent from inquiry also and did not utilized the said opportunity. It is contended that, the decision taken by the 1st Party relying on the finding of the Enquiry Officer of dismissal is just and proper which does not require any interference. So it is submitted that, enquiry be declared just, proper and finding not perverse.

(4) In view of the above pleadings my Ld. Predecessor framed the Issues at Exhibit 9. Out of those Issues Nos. 1 and 2 which were treated as preliminary issues and which are on the point of fairness of the enquiry and perversity of finding. By passing Award I on 6-9-2007 this Tribunal observed Enquiry is not fair and proper and findings are perverse and directed both to participate in the reference on the point of quantum of punishment.

(5) In view of the above now following Issues remain which I answer as under :

ISSUES	FINDINGS
3. Whether the action of the management of M/s. Air India Limited in dismissing Shri Anil M. Solnaki from service is just, fair and legal?	No
4. What relief the workman is entitled to?	He is entitled to re-instatement without back wages.

(6) Here in the second round of litigation 1st Party was supposed to prove that, the action of the Management in dismissing 2nd Party from services is just and proper. Whereas 2nd Party i.e. concerned workman, was supposed to show that, the punishment of dismissal is disproportionate. To prove that, Management filed affidavit of its witness Vishvas Vishnu Damle at Exhibit 34 in lieu of his examination-in-chief who states that, since the workman involved in the Reference was absent for 189 days from May, 1997 to May, 1998 action taken by the Management of dismissal is just and proper and does not require any interference. In the cross this witness admits that, updating leave is done on the basis of leave application submitted by the concerned and entries are done on the leave card. He admits that, charge sheet was not issued regarding 90 days absence mentioned in para 6 of his affidavit. He admits that, absence mentioned in charge sheet on which action of termination was taken was treated by 1st party as "leave without pay". This witness is unable to state whether during that period, concerned workman was facing family problems as well as whether any case was pending in Family Court. This witness also unable to state whether, any correspondence is brought on record by the 1st Party regarding his absenteeism. He admits that, he is not aware whether the concerned workmen was under treatment. Then Management filed affidavit of its another witness viz. Smt. Shanta Laxman Bansole in lieu of her examination-in-chief at Exhibit 36 who states that, employee who desire to proceed on leave has to apply in writing on leave card. According to this witness concerned workman did not apply in the prescribed form for leave. He states that, Department has sent several letters and telegrams to the concerned workman asking him to report on duty but workman did not response to the same. He further states that, if an employee is unable to report for duties on grounds of sickness, he has to inform the Department and approach the medical officer of the Department and after getting certificate from him of sickness and treatment as well as for rest, if at all suggested and obtain the fitness certificate. He states that, the concerned workman did not inform the 1st Party nor consulted the Doctor of the 1st Party and obtained necessary certificate. He states that, the concerned workman was charge sheeted for his absence without permission for 100 days and half days during the

period January 1988 to May, 1989 for which punishment of reduction in basic pay by three stages for a period of two years was awarded to him. He further states that, decision of stoppage of annual increment for a period of 3 years was taken regarding his absensee of 160 days during the period April, 1990 to June, 1991 and decision of stoppage of annual increment for a period of one year was taken for his absence of 40 days from March, 1994 to October, 1994. He further states that, decision of his reduction to a lower grade of pay/lower scale for a period of two years was taken for his absence of without leave for a period of 45 days during the period April, 1997 to June, 1997. He further states that, the concerned workman was absent for 189 days during the period May, 1997 to May, 1998 without leave for which Management took decision of his dismissal. In the cross he admits that, he did not remember whether procedure mentioned in para 6 of his affidavit was sent under his signature to the concerned workman. He also admits that, he did not remember whether the communication was there as mentioned in his affidavit. On that 1st Party closed evidence by filing closing purshis at Exhibit 38.

(7) Against that concerned workman filed affidavit for second time, in these proceedings, at Exhibit 39 in lieu of his examination-in-chief stating that, due to his sickness he unable to report on duty. He further states that, he had reason to remain absent from duty. He denies that, decision taken by the Management of his dismissal is proper. In the cross he admits his absenteeism as mentioned in the charge sheet. He admits that, no medical certificate was given by him regarding that period. Even he admits that, he did to approach medical Department of Air India for taking any treatment. He states that, he has served for 16 years. He admits that, he knows the procedure in what way application is to be given for sick leave. He admits that, no report of doctor was given to the 1st Party regarding medical treatment taken by him as mentioned his affidavit. Then 2nd Party examined Dr. Rajiv Navalbhai Jerajani at Exhibit 42 who is unable to produce clinical record of the concerned workman. However, he says that, the concerned workman was under his treatment. Even he admits that, he has not issued certificate to the concerned workman. On that, 2nd Party closed his evidence and filing closing purshis at Exhibit 45.

(8) Written arguments are submitted by the 1st Party at Exhibit 47 with some citations at Exhibit 47 and by the 2nd Party at Exhibit 48.

(9) Perused the written arguments and the evidence referred above.

(10) It is a matter of record that, for absenteeism for a period of 189 days during the period from May, 1997 to May, 1998 action of dismissal was taken. Said absenteeism of 189 days in a year during May, 1997 to May, 1998 was the reason behind taking decision of dismissal. No other grounds are mentioned as to why said action was taken

except the reason of said absenteeism. It is a matter of record that, during the tenure of his services he was awarded second punishment of stoppage of annual increment for one year, 3 years, reduction in basic pay by three stage for a period of two years and reduction to a lower grade of pay/lower scale for a period of two years and it reveals that, there is improvement. Even it is a matter of record that, he remained absent in his service tenure of 15 years on 4 occasions and this time for 189 days. So on the charge of habitual absenteeism 1st Party took decision of termination. However, at the same time it cannot be ignored that, absenteeism of 189 days from May, 1997 to September, 1998 was treated as leave without pay. That means for that period no salary was paid for 189 days. Definitely said absenteeism might have affected on the working of the management and the Management might not be in a position to give good service to the customers. One has to note that, 1st Party is engaged in providing Airport transport facility to the customers who are intending to travel through 1st Party. Definitely it might have affected on the services of the 1st Party and looking to the history of the 2nd Party that he was absent on repeated occasions it decided to take serious action of dismissal.

(11) So here question arises whether 189 days absenteeism can be reason to take decision of termination. According to me initially he was censured by awarding punishment of reducing his basic pay first time for 2 years, for absenteeism during the period January, 1988 to May, 1989 and then stoppage of annual increment for a period of 3 years regarding his absenteeism from April, 1990 to June, 1991 and then taken decision of stoppage of annual increment for a period of one year for the absenteeism of 40 days during the period from March, 1994 to October, 1994 and decision of reducing him to a lower grade of pay/lower scale for a period of two years for absenteeism of 45 days during April, 1997 to June, 1997 was taken. Then question arises why that type of punishment was not given instead of terminating the services of the concerned workman?

(12) It is a matter of record that, he did not intimate about his absenteeism. It is a matter of record that, he did not sought permission and intimate 1st Party to remain absent. It is a matter of record that, he did not gave medical certificate about his treatment or sickness and made aware 1st party that, due to his sickness he unable to report on duty. So there is reason for the Management to take action against 2nd Party but at the same time, mere absenteeism can be a ground to take decision of termination is a core point?

(13) According to me when Management can take action of stoppage of annual increments, can stop increment for one year or can reduce workman on lower grade as taken against him in past definitely cannot take action of termination in that light as it appears is excessive

one. Besides it is not shown by the Management how it can take such action of termination on absenteeism by showing any powers given to the Management and it can take action of termination. In the affidavit of Management witness viz. Shanta Laxman Bansode at Exhibit 36 she states that, in the past 1st Party has taken decision of reducing the concerned workman in lower rank or stopping his increments for two years and in some cases for 3 years. When it is like that question arises why it did not take action of that type regarding absenteeism of 189 days which was involved in the charge sheet? Nothing is stated by the Management on that point.

(14) But at the same time one has to note that concerned workman did not work for 1st party during the said period. It is not even the case of the 1st Party that he is in gainful employment and is not unemployed and even it is not case of the 2nd Party that, he is not in gainful employment or is unemployed and did not get employment during that period. It is to be noted that, he was absent from October, 1998. It is to be noted that, he did not work for 2nd Party from October, 1998. We are at the fag end of 2009. At the same time action taken by 1st Party is of termination of the services of the 2nd Party on the charge of mere absenteeism, which according to me, appears not just and proper and look harsh one which require to interfere.

(15) Considering all this coupled with the case made out by both I am of the view that action taken by 1st party of dismissal require interference with directions to 1st Party to reinstate 2nd Party since it is harsh one.

ISSUE No. 4

(16) In this set of circumstances I am of the view that, since 2nd Party did not work for 2nd Party from October, 1997 and his absenteeism affect on the regular and routine working of the 1st party I am of the view that, 2nd Party is not entitled for back wages as I feel that will be sufficient punishment to 2nd Party. So I answer this Issue to that effect.

(17) Considering all this coupled with the case made out by both I conclude that, action of the 1st Party require interference. Hence, the order

ORDER

- (1) Reference is partly allowed;
- (2) 1st Party is directed to reinstate 2nd Party concerned Workman viz. Anil Kumar Mavjibhai Solanki on the post of Loader at the earliest;
- (3) 2nd Party is not entitled for back wages and any other ancillary monetary benefits;
- (4) No order as to its costs.

Bombay, 22nd December, 2009

A. A. LAD, Presiding Officer

नई दिल्ली, 28 जनवरी, 2010

Date of passing the Award : 21-12-2009

AWARD

The matrix of the facts as culled out from the proceedings as under :

1. The Government of India, Ministry of Labour its Order No. L-11012/24/2008-IR (CM-1) dated 11th July, 2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, have referred the following dispute to this Tribunal for adjudication :

“(i) Whether the action of the management of M/s. Alitalia Linee aaliene, S.P.A., Mumbai in dismissing the services of Ms. Maninder Kaur Dhanoa, Flight Interpreter-cum-Commercial Attendant w.e.f. 08-11-2007 is justified and legal? (ii) To what relief is the concerned workman entitled?”

2. Claim Statement is filed by the 2nd Party at Exhibit 6. Written statement is not filed by the 1st party.

3. Order to proceed ex-parte was passed on which 2nd party filed affidavit at Exhibit 9, in lieu of her examination-in-chief, which was also not contested by the 1st party. It reveals that, 1st Party is not disputing the claim of the 2nd Party.

4. Here 2nd Party challenge the dismissal of the concerned workman Ms. Maninder Kaur Dhanoa who was appointed as Flight Interpreter-cum-Commercial Attendant and was dismissed on 8-11-2007. According to 2nd Party said termination is illegal and by filing Claim Statement at Exhibit 6 made out the case out it is illegal. Even she filed affidavit in support of it at Exhibit 9 claiming that, said termination under challenge is illegal.

5. Since Written Statement is not filed and the affidavit filed by the concerned workman is not disputed by 1st Party I conclude that, dismissal, under challenge, dated 8th November, 2007 is not just and proper and require to quash. Hence, the order :

ORDER

- (a) Reference is allowed ;
- (b) Dismissal order dated 8-11-2007 is hereby quashed and set aside ;
- (c) 1st Party is directed to reinstate the concerned workman Ms. Maninder Kaur Dhanoa as a Flight Interpreter-cum-Commercial Attendant with benefits of back wages and continuity of service ;
- (d) 1st Party directed to implement this order immediately ;
- (e) No order as to its costs.

Bombay,
21st December, 2009

A. A. LAD, Presiding Officer

का.आ. 575.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एलिटालिया लाइनी एरी इटेलियन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.-2, मुम्बई के पंचाट (संदर्भ संख्या 48/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2010 को प्राप्त हुआ था।

[सं. एल-11012/24/2008-आई.आर.(सीएम-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 28th January, 2010

S.O. 575.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 48/2008) of the Central Government Industrial Tribunal/cum-Labour Court No. 2, Mumbai now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of M/s. Alitalia Linee Aeree Italiane and their workman, which was received by the Central Government on 28-1-2010.

[No. L-11012/24/2008-IR (CM-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, MUMBAI

Present : A. A. Lad, Presiding Officer

Reference No. CGIT- 2/48 of 2008

Employers in relation to the management of M/s. Alitalia Linee Italiane, SPA.

The General Manager,
M/s. Alitalia Linee Aeree Italiane, SPA.
5th floor, CG House, Dr. Annie Besant Road,
Prabhadevi, Mumbai-400 025

....First Party

V/s.

Their Workmen

Maninder Kaur Dhanoa,
2/3 Versova View,
Next to Good Shepherd Church,
4 Bungalows, Andheri (West),
Mumbai-400 053

....Second Party

APPEARANCE

For the employer : No appearance.

For the workmen : Mr. Mohan Bir Singh, Advocate

नई दिल्ली, 28 जनवरी, 2010

का.आ. 576.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.1, धनबाद के पंचाट (संदर्भ संख्या 131/90) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2010 को प्राप्त हुआ था।

[सं. एल-20012/6/90-आईआर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 28th January, 2010

S.O. 576.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 131/90) of the Central Government Industrial Tribunal/Labour Court No.1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 28-1-2010.

[No. L-20012/6/90-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of a reference U/s. 10 (1) (d) (2A) of
the Industrial Disputes Act, 1947.

Reference No. 131 of 90

Parties: Employers in relation to the management of
Dugda Coal Washery of M/s. B. C. C. Ltd.

AND

Their workmen

Present : Shri H. M. Singh, Presiding Officer

APPEARANCES

For the employers : Shri H. Nath, Advocate

For the workmen : Shri D. Mukherjee, Secretary,
Bihar Colliery Kamgar Union.

State : Jharkhand. Industry : Coal

Dated, the 20th January, 2010

AWARD

By Order No. L-20012/6/90-IR (Coal-I) dated 4-6-90 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the

Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the management of Dugda Coal Washery of M/s. Bharat Coking Coal Ltd., is justified in terminating w.e.f. 12-9-88 the services of the 24 workmen detailed in Annexure employed through Contractor M/s. Madhav Singh & Co. ? If not, to what relief the workmen are entitled ?”

2. Written statement has been filed on behalf of the concerned workmen stating that S/Shri Budhan Manjhi and 23 other concerned workmen had been working as plant cleaning mazdoors at Dugda Coal Washery since 6-1-1998 continuously in the permanent and prohibited category of job under the direct control and supervision of the management. They had been working in permanent nature of job with the precinct and premises of Dugda Coal Washery and all the necessary implements for execution of the job were being supplied by the management. The concerned workmen had been working continuously since 6-1-88 till they were stopped illegally and arbitrarily w.e.f. 12-9-88. They were stopped from duty due to their repeated insistence for payment of wages as per NCWA-IV and other consequential benefits of a permanent workmen. The management had been disbursing their wages through intermediaries for less than NCWAs. III & IV. The management was also not providing them Identity Cards, pay slips and other facilities which were vehemently protested by the concerned workmen. It has been submitted that neither the so-called intermediary was possessing any valid licence nor the management was possessing any valid registration certificate as per Contract Labour (Regulation & Abolition) Act still then the management had been paying them in the name of intermediary possessing them as workmen of the alleged contractor. The union and the concerned workmen represented before the management several time challenging the illegal and arbitrary termination but without any effect. Thereafter an industrial dispute was raised before A.L.C. (C), Dhanbad which ended in failure due to adamant attitude of the management, resulting to the present dispute. The action of the management in terminating the services of the concerned workmen in violation of Sec. 25-F of the I.D. Act is invalid and void abinitio.

It has been prayed before this Hon'ble Tribunal to pass an award in favour of the workmen by directing the management to reinstate the concerned workmen with full back wages and other consequential benefits.

3. The management has filed written statement stating that the present dispute is not an industrial dispute within the meaning of Sec. 2(k) of the I.D. Act, 1947. There is no employer-employee relationship between the management and the concerned persons. The reference order is contrary to the provisions of the Industrial

Employment (Standing Orders) Act, 1946. It has been submitted that at the time when the sponsoring union raised the purported dispute before the A.L.C. (C), Dhanbad, its stand was that the 23 persons referred to in the Schedule to the reference order who are engaged by M/s. Madhab Singh & Company, Contractor in plant cleaning job. Such a basis of the demand of the Union is totally false and untenable. M/s. Madhab Singh & company, Contractor was engaged on slurry removal operations at Dugda Coal Washery at the relevant time. The plant cleaning job in respect of Dugda Washery was departmentalised by the management long long ago. Thereafter the job was never awarded to any Contractor or so called intermediary as alleged by the union. It has been submitted that the management has sufficient man power for plant cleaning job in Dugda Coal Washery and there was absolutely no question of engaging any additional man power for plant cleaning work. M/s. Madhab Singh & Company, Contractor sometimes required additional workers in connection with the works of slurry removal occasionally and on such occasion the persons concerned were issued with gate passes to enter the washery premises as per the usual practice but even then the number of persons for whom such temporary gate passes were issued was only 16. The legal position is that a Contractor engaged by an Industrial Establishment has every right to employ men according to his choice and dispenses with their services. The owner of the Industrial Establishment has no responsibility or liability whatsoever in this respect. The management's stand also find support from the following authoritative judicial pronouncement :

- (a) Ruling of the Hon'ble Supreme Court in workman of Food Corporation of India Vs. Food Corporation of India (1985-2-LLJ-4).
- (b) Ruling of the Hon'ble Supreme Court in Krishna Kurup Vs. General Manager, Gujarat Refinery (1986) (53)-FLR-613.
- (c) Ruling of the Kerala High Court in P. Karunakaran & others Vs. Chief Commercial Supdt., Southern Railway & others (1989-1-LI.J-8).
- (d) Ruling of the Hon'ble Andhra Pradesh High Court in A. P. Dairy Development Corporation, Hyderabad. Vs. K. Ramulu & others (1989-2-LLJ-312).

It has been submitted that looking at the matter from any point of view whatsoever the claim of the sponsoring Union cannot be legally maintained or sustained legally or factually and there can be no question of adjudication of any purported dispute relating to such a purported claim.

In view of the above facts and circumstances, It has been prayed that the Hon'ble Tribunal be pleased pass an award in favour of the management by rejecting the claim of the concerned persons.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. On behalf of the concerned workmen, Singrai Manjhi has been produced as WW-1, who has proved Exts. W-1 & W-2.

The management has produced MW-1 - Maheshwar Prasad Singh and some documents have been marked on formal proof being dispensed with as Exts. M-1 to M-3 and Exts. M-4 to M-4/18.

6. Argument advanced on behalf of the concerned workman is that they had been working with the management in permanent and prohibited category of job of plant cleaning at Dugda Coal Washery since 6-1-88 continuously and they were stoped from duty by the management with effect from 12-9-88 without complying the mandatory provisions of law. It has also been argued that they had been working under the direct control and supervision of the management and all the implements for execution of the job were being supplied by the management and they were discharging their duties and rendering services for the benefit of the management and for all purposes they were the employees of the management. In para 4 of the written statement of the management they admitted that M/s. Madho Singh & company was entrusted the job of slurry removal and not plant cleaning job. In para 5 of the written statement it has been stated that plant cleaning job was departmentalised by the management long ago as it was a prohibited category of job. In para 7 of the written statement of the management it has been stated that all the concerned workman were never employed by the management directly or indirectly through any Contractor and in Para 8 of the written statement the management's plea is that only 15 persons were issued gate pass for performing the job inside the factory premises. Ext. W-1 shows that the concerned workman have worked in the plant cleaning and also directed the CISF to issue gate pass to 14 persons for doing urgent piece of work dated 13-9-88. Ext. W-2 bears the signature of the Chargeman of Dugda Coal Washery in which the names of the concerned workman and the job performed by them are written by the Chargeman. Ext. M-2 is Conciliation file dated 12-10-89 written by the management to the A.L.C. (C) wherein and whereby the management stated that no contract was entrusted to M/s. Madho Singh & company for plant cleaning job and these concerned workman were never engaged in the forth at Dugda. In this respect evidence of the management's witness MW-1 -Maheshwar Prasad Singh is very much material. MW-1 in his cross-examination at page 2 has stated that the slurry removal is now a permanent job and subsequently it was put under prohibited category of work relating to employment of contract work. Almost all the

workmen who were engaged in slurry removal work were regularised in service of the management. This statement of the management's witness shows that the concerned workman were performing slurry removal work which is prohibited category of job. Almost all the slurry removal workers have been regularised and the concerned workman have not been regularised though they were working in prohibited category for slurry removal workers and they cannot be treated as contract workmen.

Again the management's witness, MW-1, stated that the job of plant cleaning has become a permanent job, put under the prohibited category of work and in the year 1980 the management had departmentalised this work. In the year 1993, 64 plant cleaning mazdoors were regularised in service under order of the Hon'ble High Court. MW-1 again stated in cross-examination that there is an agreement under NCWA that contract labours would not be employed for permanent nature of job. This shows that when there is an agreement that permanent nature job cannot be given to contract labours as per NCWA. Thus, by giving contract work by the management shows violation of the agreement. The workmen have referred an award dated 21-2-92 passed by this Tribunal in Reference No. 151 of 1989 in which appeal was made by the management before Hon'ble Patna High Court, Ranchi Bench, being LPA No. 24/98 (R) which was admitted by the Hon'ble High Court on the limited question about payment of arrears w.e.f. 22-12-83 and the award has been upheld whereby direction for payment of arrears of back wages were made. Against the order of Hon'ble High Court the management filed S.L.P. (Civil) No. 14964/98 dated 18-9-98 which was dismissed by Hon'ble Apex Court. Another order filed by the workmen passed by Hon'ble Division Bench of Patna High Court in which at page 16 the Hon'ble High Court allowed partly this appeal, and upholding in entirety the reinstatement relief and the impugned award and impugned judgement of the learned single Judge are set aside in so far as these grant the relief of payment of back wages is concerned. It shows that the order passed regarding reinstatement of 70 workmen has been upheld by the Hon'ble Division Bench of the High Court. Another award has been filed by the workmen in Reference No. 58 of 1992 dated 3-10-1996 in which about more than 200 persons have been regularised in which the management filed CWJC No. 199/97 before Hon'ble Patna High Court, Ranchi Bench which was dismissed by order dated 9-4-99 and L.P.A. No. 211/99 (R) was also dismissed by Hon'ble High Court vide order dated 19-8-99.

This shows that in the present case the facts are similar. On behalf of the workmen reference has been made in the decision reported in 2002 LLR 449 between M/s. Indian Farmers Fertilizer Corporation Ltd. Vs. Industrial Tribunal, Allahabad & others, on which Hon'ble Supreme Court laid down - whether 88 workmen in question were employees of appellant or of contractor Industrial Tribunal and High Court have rightly held that they are employees of appellant.

Another law referred by the workmen reported in 2008 AIR SCW 3996 (GN., O.N.G.C., Shilchar Vs. O.N.G.C. Contractual workers Union in which Hon'ble Supreme Court laid down- "wording of reference showing that dispute was as to regularization of service of contractual workers- pleadings however showing that core issue before Tribunal was with regard to status of workers as employees of principal employer - Award of Tribunal holding workers to be employees of principal employer and granting relief of regularization." In this respect Hon'ble High Court also referred.

2007 AIR SCW 4933, AIR 2007 SC 2733; 2007 Lab.I.C.3209,

2006 AIR SCW 212, AIR 2006 SC 845; 2006 Lab.I.C.865,

2006 AIR SCW 4250, AIR 2006 SC 2936; 2007 Lab.I.C.3531,

2006 AIR SCW 5994 : 2007 (1) ALJ 505 and

2006 AIR SCW 64 : 2007 Lab.I.C.590 : 2007 (1) AIR Bom R 757

7. Considering the facts and circumstances and the evidence produced by the concerned workmen and the management, it shows that the concerned workmen were performing permanent nature of job which cannot be given to the contract labour. The job performed by them is prohibited as per evidence given by the management's witness and it has also been admitted in para 8 of the written statement of the management that gate passes were issued to about 16 persons to work in the management's premises. It shows that the concerned workmen were working with the management and the implements were being supplied to them and their work was supervised by the management. In such circumstances they are entitled for regularisation after reinstatement and in similar nature of case the management has regularised other persons which has been admitted by the management's witness in cross-examination and in similar nature of case in favour of the workmen which has been upheld by the Hon'ble Supreme Court.

In view of such circumstances, the concerned workmen are entitled for re-instatement in service with effect from 12-9-1988 with 50% back wages.

8. Accordingly, I render the following award—

The management of Dugda Coal Washery of M/s. BCCL is not justified in terminating w.e.f. 12-9-88 the services of 24 workmen detailed in Annexure employed through Contractor, M/s. Madhav Singh & Company. Hence, the management is directed to re-instate the concerned workmen w.e.f. 12-9-88 with 50% back wages in the services of the management within 30 days from the date of publication of the award.

H. M. SINGH, Presiding Officer

ANNEXURE-I

Sl. No.	Name	Partner's Name
1.	Shri Budhan Manjhi	Chhinnu Manjhi
2.	Shri Singharai Manjhi	Gorabai Manjhi
3.	Shri Shivnandan Manjhi	Ram Manjhi
4.	Shri Koteswar Manjhi	Gorabai Manjhi
5.	Shri Hiran Manjhi	Sarkar Manjhi
6.	Shri Golu Manjhi	Shibu Manjhi
7.	Shri Ladania Manjhi	Ram Manjhi
8.	Shri Rameshwar Manjhi	Gorabai Manjhi
9.	Shri Ram Sunder Manjhi	
10.	Shri Ramesh Manjhi	Babulal Manjhi
11.	Shri Ramesh Manjhi	
12.	Shri Chhinnu Manjhi	Shibu Manjhi
13.	Shri Pati Manjhi	
14.	Shri Harida Manjhi	Dhama Manjhi
15.	Shri Suresh Reswani	Salu Reswani
16.	Shri Devilal Manjhi	Naina Manjhi
17.	Shri Shivlal Manjhi	Hakin Manjhi
18.	Shri Phulechand Manjhi	Baburam Manjhi
19.	Shri Saira Manjhi	Late Babu Manjhi
20.	Shri Tirupati Manjhi	Rameshwar Manjhi
21.	Smt. Birajmuni Devi	Shri Tufshi Manjhi
22.	Smt. Lalmoni Devi	Shri Sonra Manjhi
23.	Smt. Parmati Devi	Shri Banshi Manjhi
24.	Smt. Kumari	Shri Hopna Manjhi

28 दिवसी, 28 जनवरी, 2010

का.आ. 577.-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी. सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में उल्लिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय सं. 1, धनुवाद के पंचाट (संदर्भ संख्या 233/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2010 को फल हुआ था।

[सं. एन. 20012/129/2000-आई.आर.(सी-1)]

स्नेह लता जावास, डेस्क अधिकारी

New Delhi, the 28th January, 2010

S.O. 577.- In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 233/2000) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 28-1-2010.

[No. L-20012/129/2000-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of reference No. 10 (1) (d) (2A) of
Industrial Disputes Act, 1947.

Reference No. 233 of 2000

Parties: Employers in relation to Ramkanali Colliery of
M/s. Bhand Coking Coal Ltd.

AND

Their workmen

Present : Shri H. M. Singh, Presiding Officer

APPEARANCES

For the employers : Shri R. N. Ganguly, Advocate

For the workmen : Shri N. G. Arun, Organising
Secretary, R.C.M.S.

State : Jharkhand Industry : Coal

Dated, the 19th January, 2010

AWARD

By Order No. L-20012/129/2000-IR (C-1) dated 9-8-2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Ramkanali Colliery, Dhanbad of M/s. B.C.C.Ltd. in dismissing Shri Madhusudan Lal Begi from the service of the company w.e.f. 17-1-94 and on this ground after his death not providing benefit of employment scheme is proper, legal and justified? If not, to what relief the workmen or his dependent entitled?"

2. Written statement has been filed on behalf of the workmen that Late Madhusudan Lal Begi had been working as Sweeper at Ramkanali Colliery since 4-5-81. He was regularised as permanent sweeper on and from 12-1-89. During the tenure of his service he was found punctual, diligent and regular in the job and that is why he had been regularised by the management as permanent worker. The deceased workman had been suffering from T.B. from last 10 to 12 years and was undergoing treatment of Dr. R.R. Pandey, a specialist and consulting physician. Despite his ill health and deteriorating physical condition he had always been attending his duty in time. The management was well aware of the fact this schedule caste poor employee had been suffering from T.B. which is very serious in nature. During the course of prolong treatment at a Govt. Health Centre nearby his village he expired on 17-12-95. The deceased workman had never been residing in company's quarter as he always used to attend duty coming from his native village which is situated more than Ten K. Ms. from his place of working. In such circumstances

it was quite impossible for an illiterate lady (wife) to give information to the authority of the colliery about his husband's severe condition. The deceased workman remained absent from duty only when he became bed ridden. The deceased workman was never informed about any domestic enquiry during his life time. He had also not been informed about an exparte enquiry which resulted in dismissal of the workman. The Enquiry Officer conducted enquiry violating the principles of natural justice. The witnesses were not examined in presence of the workman and he was not given fair opportunity to examine the witnesses including himself in his defence. The disciplinary authority has suppressed the whole enquiry proceeding. The disciplinary authority has not given second opportunity the delinquent by serving a show cause against the proposed punishment of dismissal. The quantum of punishment has not been decided on the gravity of the misconduct. The Enquiry Officer and punishing authority both have proceeded according to their own whim. The deceased workman had been illegally dismissed from service of the company so till his death he should be treated in the roll of the company. The demand of the dependent for employment in M/s. B.C.C.Ltd. is justified. Seeing no other alternative and industrial dispute was raised before the A.L.C. (C), Dhanbad which ended in failure due to adamant attitude of the management and the present reference is the out come of that dispute.

It has been prayed that this Hon'ble Tribunal be graciously pleased to pass and award setting aside the order of dismissal and directing the employer to offer employemnt to the dependent of Late Madhusudan Lal Begi, Ex-sweeper, in BCCL.

3. Written statement has been filed by the management stating that Madhusudan Lal Begi was working as sweeper at Ramkanali Colliery. He developed the habit of absenting from his duties without information or permission. He started absenting from his duties w.e.f. 15-3-93 continuously for more than 10 days. A chargesheet was issued to him for unauthorised absence from duties. After holding a departmental enquiry, according to the provisions of certified standing order and after giving reasonable opportunity to defend his case, he was dismissed from his service by letter dated 27-1-94. He did not raise any dispute over the dismissal from service and he never represented for setting aside the order of dismissal and reinstating him for his service. He continued absenting from his duties till the sponsoring union made out the present case before the ALC in the year 2000. It has been submitted that the sponsoring union made out the case that the aforesaid workman absented from his duties unauthorisedly on account of sickness and he died on 17-5-95. The union represented that the concerned workman had no opportunity to communicate with the management regarding his illness and, as a result, no information could be given to the management about his sickness. It is submitted that as the concerned workman absented from

his duties from 15-3-93 till his dismissal and did not appear before the management for filing any petition for setting aside the order of dismissal or allowing him to assume his duties till his death, he could not get any relief whatsoever by way of wages or any benefit. It has been submitted that the sponsoring union has no authority to raise any dispute on behalf of some imaginary person claiming to be dependent of any workman. As no person ever filed any petition before the management demanding for his employment as dependant of the aforesaid Madhusudan Lal Begi, the management had no occasion to consider such case. The sponsoring union cannot make out a case on behalf of some imaginary person describing him as a dependent and thereby inducing into the employment of any person according to their choice.

Under the facts and circumstances, it has been prayed that the Hon'ble Tribunal be graciously pleased to pass an award holding that no relief can be granted to the concerned workman or to his dependent.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. On behalf of the concerned workman Smt. Charu Bala Devi alias Charia Devi has examined herself as WW-1.

On behalf of the management MW-1 - Sata Nand Dubey has been examined, who has proved documents as Exts. M-1, M-2, M-3, M-3/1, M-3/2 and M-4, M-5 and M-6.

6. Main argument advanced on behalf of the concerned workman is that exparte enquiry was conducted and no notice of enquiry was sent to the concerned workman he was suffering from T.B. The concerned workman was given 48 hours to reply the charge-sheet. As per clause 27.1 of the certified standing order the charge-sheeted workman is given 48 hours to reply the charge-sheet which is for minor punishment and if the charge-sheeted workman is given 7 days time to reply the charge-sheet which is for major punishment as per clause 27.2 of the certified standing order applicable to BCCL. But for minor punishment the concerned workman has been dismissed from service.

7. The management has argued that it is correct that 48 hours time was given to the concerned workman for reply to the charge-sheet. When 48 hours has been given then it shows that the management has got no right to impose punishment of dismissal.

8. Another argument advanced on behalf of the concerned workman that the dismissal has been passed by the Appellate Authority against principle of natural justice. Ext. M-6 shows that the concerned workman was dismissed by th Project Officer who has no authority which shows violation of rules. Another argument advanced on behalf of the concerned workman is that the charge-sheet has been issued by Mines Superintendent who is not

Agent or Owner of the Project and as per company's standing order only Area Manager or project Manager are authority to issue charge-sheet.

9. Another argument advanced on behalf of the concerned workman is that for dismissal no 2nd show cause notice was given to the concerned workman. As per law laid down by the Hon'ble Supreme Court, reported in Current Labour Report 1991 page 61 (SC) 1991 L.L.J. (Vol-I) page 29 (Union of India & Ors. Vs. Mohd. Hamzan Khan), the Hon'ble Supreme Court laid down that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would therefore be entitled to the supply of a copy thereof. In the present case no copy of chargesheet was given to the concerned workman. MW-1 in cross-examination at page 2 stated that the charge-sheet was issued by the Mines Manager/Superintendent of Mines. In the dismissal letter there is no mention of the clause of Standing Orders under which the concerned workman was dismissed. It shows that Ext. M-6 which is dismissal order in which also there is no mention of the enquiry report, proceedings and proposed punishment. It shows that illegality has been committed by the management before dismissing him.

10. Regarding ex-parte enquiry, as per argument on behalf of the concerned workman, the concerned workman was a Sweeper and suffering from T.B. and coming from his native village which is situated more than 10 K.M. from his place of working. He was not residing in company's quarter. So he was unable to send his leave application. Regarding no notice has been served in this respect, the management has not filed any document, postal receipt which may show that step has been taken by the Enquiry Officer to inform the concerned workman about enquiry. Management's witness, MW-1- Satanand Dubey has stated in cross-examination - "I do not recollect if I had sent separate information to the concerned workman regarding my appointment as Enquiry Officer. There is no proof of having served the chargesheet to the concerned workman in the documents filed by the management. The notice of the enquiry was not published in any News Paper. During enquiry document relating to his absent was not produced before me." It shows that the document regarding his absence on which basis charge-sheet was issued has not been proved by the management, then on what basis the Enquiry Officer conducted the enquiry. Moreover, no notice was served, as per MW-1, to the concerned workman regarding domestic enquiry and no publication was done also in the News paper.

11. The concerned workman has referred Awards Digest 1988 L.L.R 1097 has not been complied 1999 Lab. IC 2933 in which Madras High Court laid down that the punishment of dismissal from service for the alleged misconduct of remaining absent for ten days was

disproportionate and reinstatement with 75% back wages was allowed.

Another ruling was referred by the concerned workman reported in 2000 Lab. IC 2584 in which Hon'ble Gujarat High Court laid down that Under Sec. 11-A of Industrial Disputes Act, 1947, before imposing punishment, the disciplinary authority should consider the socio-economic and family background of the workman, length of service and the compelling circumstances for committed misconduct and past records. Punishment of dismissal from service was harsh if it was imposed only because of violation of administrative instructions and there was no allegation of corruption or dishonesty.

The work man also referred 1995 (II) L.L.J 68 (Sujit Ghosh Vs. C.M.D., United Commercial Bank & Ors) in which Hon'ble Supreme Court laid down that when the appellate authority works as disciplinary authority the dismissal suffers from inherent defect. In the present case also appellate authority has passed dismissal order which suffers inherent defect.

Hon'ble Supreme Court held in the case of Electronics Corporation of India Vs. G. Murlidhar reported in 2001 (I) L.L.J 1342 wherein Hon'ble Court held that a right of appeal denied to the delinquent employee so the order of termination is vitiated and the appellate authority can not be a disciplinary authority.

Hon'ble Jharkhand High Court held in the case of Ahmad Sher Vs. Union of India reported in 2002 Lab. I.C. 507 that after issuing a charge-sheet for minor punishment, major punishment can not be imposed at the time of awarding punishment.

Hon'ble J & K High Court held in the case of Hafiz Nasir Jan Vs. State forest reported in 2000 Lab. I.C. 900 that non-supply of copy of enquiry report vitiates the entire disciplinary proceedings and violates the principles of natural justice. The order of punishment is bad in law.

12. In the present case before imposing punishment the enquiry report was not supplied to the concerned workman, even after imposing the punishment it was not supplied. As per Mines act, Sec. 17 the Managers are only competent persons and shall be responsible for the overall management, control, supervision and in the present case Mines Supdt. issued the charge-sheet to the concerned workman who is not Manager and not competent to issue chargesheet. So, it shows that the concerned workman was dismissed from service by the appellate authority which is violative of rules. Moreover, no notice was given to the concerned and it was not published in any News Paper nor the postal receipt of proof that any notice was sent regarding domestic enquiry. Moreover, when final order of dismissal was issued no show cause notice was given to the concerned workman which is violative of principle of natural justice. The concerned workman was Sweeper and he was suffering from T.B. so the dismissal of the concerned workman is unjustified and he is entitled to be reinstated in service and will be treated as permanent employee of the management till his death and as per

N.C.W.A. his dependent is entitled for employment in M/s. B.C.C. Ltd.

13. Accordingly, I render the following award-

The action of the management of Ramkanali Colliery, Dhanbad of M/s. Bharat Coking Coal Ltd. in dismissing Shri Madhusudan Lal Begi from the service of the company with effect from 27-1-94 and on this ground after his death not providing benefit of employment scheme is not proper, legal and justified. Hence, the management is directed to provide employment to the dependent of the concerned workman under the provisions of NCWA within 30 days from the date of publication of the award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 28 जनवरी, 2010

का.आ. 578.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी. सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं.-1, धनबाद के पंचाट (संदर्भ संख्या 57/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2010 को प्राप्त हुआ था।

[सं. एल-20012/245/93-आई.आर.(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 28th January, 2010

S.O. 578.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 57/94 of the Central Government Industrial Tribunal No.1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCI. and their workmen, which was received by the Central Government on 28-1-2010.

[No. L-20012/245/93-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of a reference U/s. 10 (1) (d) (2A) of
Industrial Disputes Act, 1947

Reference No. 57 of 1994

Parties: Employers in relation to the management of
Bhatdee Colliery of M/s. B. C. C. Ltd.

AND

Their workmen

Present : Shri H. M. Singh, Presiding Officer

APPEARANCES

For the employers : Shri H. Nath, Advocate
For the workman : Shri D. Mukherjee, Secretary,
Bihar Colliery Kamgar Union
State : Jharkhand. Industry : Coal

Dated, the 15th January, 2010

AWARD

By Order No. L-20012/245/93-IR (Cole-I) dated 24-3-1994 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Bhatdee Colliery of Mohuda Area of BCCI, P.O. Mohuda, Dist. Dhanbad in dismissing Shri Gobardhan Bouri, CMPF Clerk w.e.f. 3-10-92 is justified ? If not, to what relief is the concerned workmen entitled ?”

2. Written statement has been filed on behalf of the workmen stating that Gobardhan Bouri had been working as permanent Clerk at Bhatdee Colliery since long with unblemished record of service.

The management with an ulterior motive to victimise the concerned workman for his activities in union participation issued a false and frivolous charge-sheet on 3-7-92 wherein and whereby several allegations were levelled against him. The charge-sheet was issued by unauthorised person. The concerned workman submitted his reply denying the charge emphatically giving reasons. The management constituted an invalid and irregular enquiry. A biased and prejudiced Enquiry Officer was appointed by unauthorised person to complete empty formality. He was not afforded full opportunity to adduce his full evidence or to cross-examine the management's witness. For the same fecimal charge an F.I.R. was also lodged during the pendency of the criminal case. The management started departmental proceeding which was objected by the concerned workman. The disclosure of the evidence during the course of departmental enquiry when criminal case is pending would jeopardise the concerned workman's defence and hence full defence was not disclosed. In the enquiry also the allegation of absence from duty was not established. The concerned workman also stated in his reply to the chargesheet that entries in CMPF record so far the allegation is concerned were made by Mahesh Chandra Mishra and accordingly concerned workman requested the management to get it verified through handwriting expert. The management neither got the handwriting verified through handwriting expert nor tried to examine Mahesh Chandra Mishra to verify the statement of the concerned workman. It has been stated that in the invalid and irregular enquiry the charge against the concerned workman was not established still then the concerned workman was dismissed by unauthorised person. The concerned workman challenged the dismissal vehemently but without any effect. Thereafter an industrial dispute was raised before the A.L.C. (C) which ended in failure and resulting to the present reference.

It has been prayed that this Hon'ble Tribunal be pleased to answer the reference in favour of the workman

by directing the management to reinstate the concerned workman with full back wages.

3. Written statement has been filed by the management stating that the concerned workman, Gobardhan Bouri was a permanent C.M.P.F. Clerk of Bhatdee colliery of M/s. BCCL, Mohuda Area. While checking of I/V statement and Y.Y. statement of CMPF for the years 1989-90 and 1990-91 which were prepared by the concerned workman, it was found that the concerned workman had manipulated the records of CMPF Contribution in respect of his own and Mahesh Chandra Mishra, another P.F. Clerk of Bhatdee Colliery sending an excess amount of Rs. 3,500 than the actual contribution of his own and Shri Mishra. He was also found absenting from duty from 17-1-93 unauthorisedly in order to evade the checking of Y. Y. and I/V statement of C.M.P.F. The concerned workman was also earlier charge-sheeted vide charge-sheet dated 16-1-92 wherein he was alleged to have misappropriated the unpaid amount of Rs. 2,200 which was also an act of dishonesty in connection with company's business and property. Several complaints were also received from the workers of Bhatdee Colliery for which F.I.R. was lodged before the officer-in-Charge, Mohuda P.S. Further charge-sheet was issued to the concerned workman vide chargesheet dated 3-7-92 for the gross misconduct under Certified Standing Orders applicable to Bhatdee colliery under sub-Clause 26.1.1, 26.1.2, 26.1.10, 26.1.11, 26.1.12, 26.1.15 and 26.1.29. He submitted his reply on 8-7-92 which was not found satisfactory and a domestic enquiry was ordered by Dy. C.M.E., Bhatdee Colliery vide letter dated 27-9-92 wherein Sri R.K. Mukherjee, Personnel Manager was appointed as Enquiry Officer. The Enquiry Officer fixed dates of enquiry on 26-8-92 and 28-8-92 and the concerned workman fully participated in the enquiry and also cross-examined the management's witnesses. The Enquiry Officer found the charges levelled against him proved beyond all reasonable doubt. Accordingly, since the charges were of grave in nature, he was dismissed from service by Dy. Chief Mining Engineer, Bhatdee Colliery vide letter dated 3-10-92. The Enquiry Officer held the enquiry according to the rules of natural justice and gave full opportunity to the concerned workman to defend his case.

In rejoinder to the written statement of the workman, the management has stated almost same things as has been stated in written statement and denied contents of some of the paragraphs of the written statement of the workman. The management has stated that the charge-sheet was issued by an authorised person.

It has been prayed before this Hon'ble Tribunal to pass an award by holding that the action of the management in dismissing Gobardhan Bouri w.e.f. 8-10-92 is justified and he is not entitled to any relief.

4. The rejoinder has been filed on behalf of the workman stating almost same things as have been stated in the written statement. It has been denied that the concerned workman had prepared I/V and Y/Y statement of CMPF for the year 1989-90 and 90-91.

5. The management has produced MW-1-R.S. Mahapatra who has proved documents marked Exts. M-1 to M-5.

The concerned workman has produced himself as WW-1 in support of his case.

6. Main argument advanced on behalf of the workman that no handwriting expert's opinion and the concerned workman has been held guilty for manipulation of provident fund contribution. He has argued that Mahesh Chandra Mishra had made the entries in CMPF record which is evident from his handwriting, but he has not been examined by the management. It has also been argued that no second show-cause notice has been given to him.

In this respect the management argued that the concerned workman moved application before the management regarding commission of above manipulation as per Ext. M-2. This application has been moved by the concerned workman regarding withdrawal of contribution excess amount of Rs. 3500 to CMPF for manipulation. It has been written by the concerned workman that above amount can be deducted from his salary. It only shows that he has confessed the above manipulation which has been written by him. In this respect WW-1 stated in cross-examination that 'I had not made any complaint during the enquiry preceeding to the effect that the proceeding is not being conducted fairly and I was not given opportunity to defend my case'. It only shows that the enquiry was conducted fairly and properly against the concerned workman and it is not necessary in that respect that in such case handwriting expert should be examined and that the concerned workman had not demanded that Mahesh Chandra Mishra should be examined as management's witness when he had moved Ext. M-2 for deduction from his salary the above manipulated amount. It only shows that he has done manipulation and it was his duty to maintain CMPF Register and contribution. Ext. M-4, enquiry report shows that during fairness of enquiry proceeding by the management full opportunity was given to the concerned workman on which basis dismissal order, Ext. M-6 has been passed.

7. In view of the facts and circumstances stated above, I hold that the action of the management of Bhatdee Colliery of Mohuda Area of BCCL, P.O. Mohuda, Dist. Dhanbad in dismissing Sh. Gobardhan Bouri, CMPF Clerk w.e.f. 3-10-92 is justified and accordingly the concerned workman is not entitled to any relief.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 28 जनवरी, 2010

का.आ. 579.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी. सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, धनबाद के पंचाट (संदर्भ संख्या 294/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2010 को प्राप्त हुआ था।

[सं. एल-20012/128/2000-आईआर(सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 28th January, 2010

S.O. 579.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 294/2000) of the Central Government Industrial Tribunal, No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 28-1-2010.

[No. L-20012/128/2000-IR (C-1)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of a reference U/S. 10 (1) (d) (2A) of Industrial Disputes Act, 1947.

REFERENCE No. 294 of 2000

Parties:

Employers in relation to the management of West Mudidih Project of M/s. B.C.C.L.

AND

Their Workmen.

Present: Shri H. M. SINGH, Presiding Officer

APPEARANCES

For the Employers : Shri D. K. Verma, Advocate

For the Workman : Shri M. N. Rowani, Advocate

State. Jharkhand

Industry : Coal

Dated, the 17th January, 2010

AWARD

By Order No. L-20012/128/2000-IR (C-1) dated 27-9-2000 the Central Government in the Ministry of Labour

has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of M/s. BCCL, West Mudidih Project in retiring Sri Maheshi Shaw w.e.f. 15-9-1998 is justified? If not to what relief is the concerned workman entitled?”

2. Written statement has been filed on behalf of the concerned workman, Maheshi Shaw, stating that he had been appointed by the authority of private coal company in the year 1963 in Angarpathra Colliery and Form ‘B’ Register was filled up his date of birth as 20-3-46 and in I. D. Card also the same date of birth was recorded as 20-3-46. He also obtained licence of Electrician from the Electricity Board, Bihar at Patna in which his date of birth has been recorded as 20-3-1946. The elder brother of the concerned workman is also an employee of Angarpathra Colliery and his date of birth is recorded as July, 1944 as the date of birth of the concerned workman cannot be 1-7-1938. The dispute of the concerned workman is only depend an original Form ‘B’ Register. On the basis of the forged duplicate document the said workman is forcibly superannuated by the management.

It has been prayed that the Hon’ble Tribunal be pleased to pass an award in favour of the workman.

3. Written statement has been filed by the management stating that the concerned workman declared his date of birth at the time of his employment at Angarpathra Colliery and in the Form ‘B’ Register of Angarpathra Colliery his date of birth has been recorded as September, 38. He was transferred to West Mudidih Colliery from Angarpathra Colliery and in the IPC, his date of birth has been indicated as September, 38. The concerned workman was issued service excerpt in the year 1987 and is the service excerpt due to inadvertance, his date of birth has been shown as 1-7-37. The concerned workman corrected the same as 1938 and put his signature in taken of acceptance of his date of birth as 1-7-38. He was issued letter dated 5-5-98 informing him that he was to be superannuated w.e.f. 15-9-98 as he would attain the age of superannuation on that date. The management requested the Personnel Manager of Angarpathra Colliery by letter dated 1-5-98 to inform relating as exact date of birth recorded in Form ‘B’ Register of Angarpathra Colliery. The Personal Manager confirmed that the date of birth has been recorded as September, 1938 in Form ‘B’ Register.

The concerned workman was accordingly intimated by letter dated 31-5-98 by the Project Officer of West Mudidih Colliery. The concerned workman never raised any dispute for correction of his date of birth before hand and has raised the present dispute after his superannuation. He did not raise any industrial dispute for correction of his

date of birth from the date of his employment till date of his superannuation, he has no right to raise any industrial dispute at the fagend of his superannuation with same ulterior motive. The superannuation of the concerned workman is legal and justified and he is not entitled to any relief.

It has been paryed that Hon'ble Tribunal be pleased to pass the award holding that the concerned workman is not entitled to any relief.

4. Both the parties have filed their respective rejoinder admitting and denying the contents of same of the paragraphs of each others written statement.

5. The management has produced MW-1 Ramjan Ansari who has proved documents marked as Exts. M-1 to Ext.M-5. Also proved Ext. W-1.

The concerned workman has produced himself as WW-1 in support of his case. Documents on behalf of the workman have been marked Exts.W-1, W-2, and X/1 and X/2 for identification.

6. The main argument advanced on behalf of the concerned workman is that he was appointed at Angarpathra colliery on 1-7-1963.

At that time it was private coal company and in Form 'B' Register which has been filled up at Sl. No. 422 and Identity Card No. 28097 issued his date of birth has been mentioned 20-3-46 as per Ext.W-2. He has also obtained licence of Electrician from the Electricity Board, Bihar at Patna in the year of 1993 dated 26-2-73 in which his date of birth has been mentioned as 20-3-1946 and in his application, Ext.W-1, his date of birth has been mentioned as 20-3-1946. No filed a petition dated 24-6-02 for calling Form 'B' Register which is in the custody of the management, but they have not filed. As per Ext.W-2 and 'X' for identification his date of birth has been mentioned as 20-3-46. As per Ext.M-3 his date of birth has been mentioned as September, 1938. It has been argued that this Form 'B' Register which is showed by the management is false and duplicate one and which was prepared in 1977 and on that basis he was wrongly superannuated w.e.f. 15-9-98. As per the deposition of MW-1, the concerned workman got treatment in the management's hospital for proper identification of the Form 'B' no. and in one of the outdoor ticket of the concerned workman dated 15-2-80, marked 'X/1' for identification the Form 'B' is mentioned as 422. As per IPC, Ext.M-1 the date of appointment is shown as 1-7-63 while in so called Form 'B' register bearing serial No. 365 the date of appointment is 1-7-56, Ext. 'X/1' and those two documents of the management contradict to each other. After application of the concerned workman dated 20-4-98, Ext. W-1, the management for

correction of his age in service record conducted a medical board for assessment of his age on 8-7-98 as Central Hospital Katras in which the date of birth was assessed as 20-3-46 but the said medical report was also not produced before the Tribunal.

7. In this respect the management argued that the date of the concerned workman as 1-7-37 has subsequently been corrected as 1-7-38 as per Ext.M-5 and also in L.P.C.Ext.M-1 his date of birth is recorded as 1-7-38. His date of birth has been confirmed from the Project Officer, West Mudidih Colliery who wrote a letter to the Project Officer, Angarpathra Colliery for correction of date of birth mentioned in last pay certificate which has been filed as per Ext.M-2. The Personal Manager of Angarpathra Colliery confirmed the date of birth of the workmen concerned vide his letter dated 22-5-98, as per Ext.M-3 in which the management of Angarpathra Colliery confirmed the date of birth of the concerned workman as September, 1938 as per initial Form 'B' Register. On 29-5-1998 the management informed the workman concerned regarding his date of birth mentioned in Form 'B' Register of Angarpathra colliery which is Ext.M-4. During cross-examination the concerned workman admitted that in the I.D. Card the serial number of Form 'B' Register 422 has been written in another ink, after deleting the first one. Accordingly he admitted the I.D.Card which is Ext.W-2 the date of birth mentioned as 20-3-1946 is manipulated and it was written in another ink after deleting the first one. During cross-examination the concerned workman admitted that 'I have received service excerpt in which my date of birth has been recorded as 1-7-37 and he further admitted 'I have not objected to the said date of birth'. No admitted that he obtained electrician certificate after coming into the service of the company and as per Implementation Instruction No.76 the date of birth mentioned in the educational certificate is acceptable if the employee obtain the said certificzte before employment. WW-1 during cross-examination admitted that at the time of appointment I have not filed any certificate regarding my date of birth due to any illiteracy. The concerned workman has admitted that in Identity Card the date of birth has been written in another ink by deleting the first one and he received service excerpt in which his date of birth has been recorded as 1-7-37 on which he has not made any complaint regarding his date of birth till this reference. It shows that he moved application for correction of his date of birth at the fag and of his service. He had not filed any certificate at the time of his appointment. The statutory register maintained by the company shows his date of birth as 1-7-38 and it has also been confined by the previous employer from the present employer regarding his date of birth.

In such circumstances I find that the concerned workman is not entitled to any relief.

8. Accordingly, I render the following award -
The action of the management of M/s. BCCL, West Mudidih Project in retiring Maheshi Shaw w.e.f. 15-9-1998 is justified and the concerned workman is not entitled to any relief.

H. M. SINGH, Presiding Officer

नई दिल्ली, 28 जनवरी, 2010

का.आ. 580.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी.सी. एल. के प्रबंधन के संबंध में निर्योक्तों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, धनबाद के पंचाट (संदर्भ संख्या 103/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2010 को प्राप्त हुआ था।

[सं. एल-20012/109/2001-आईआर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 28th January, 2010

S.O. 580.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 103/2001) of the Central Government Industrial Tribunal, No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. C.C.L. and their workmen, which was received by the Central Government on 28-1-2010.

[No. L-20012/109/2001-IR (C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of Industrial Disputes Act.

REFERENCE No. 103 of 2001

Parties:

Employers in relation to the management of Bachra Project of M/S. C.C.Ltd.

AND

Their Workmen.

Present: Shri H.M. SINGH, Presiding Officer

APPEARANCES

For the Employers : Shri D. K. Verma, Advocate

For the Workman : Shri R. N. Ganguly, Advocate

State: Jharkhand

Industry : Coal

Dated, the 22nd January, 2010

AWARD

By Order No. L -20012/109/2001/IR (C-I) dated 27-4-2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the dismissal of Shri S. K. Roy, Electrical Fitter from the services w.e.f. 24-12-94 by the management of Bachra Project of CCL. is according to rule, legal and justified? If not to what relief is the concerned workman entitled?”

2. The case of the concerned workman is that he was a permanent employee of M/s. C.C.L. in Bachra Project working as Electrical Fitter. The concerned workman was not provided with any accommodation at his place of work, as such his family was residing at Swang Colliery. So he took one day's casual leave on 4-9-94 and had to go to Swang Colliery for some urgent and unavoidable domestic work. He suddenly fell ill at Swang and was admitted in Swang Colliery Hospital of M/s. C.C.L. for treatment from 6-9-94. The concerned workman informed the Manager of his colliery about his illness in writing per Regd. A/D Post which was received by his office on 12-9-94. He remained under the treatment of Swang Colliery Hospital from 6-9-94 to 16-9-94 and was declared fit to resume duty on 19-9-94 vide fit certificate No. 11999 which was granted by Medical Officer In -charge, Swang Hospital. He reported for duty alongwith the medical certificate, but he was not allowed to join his duty. He was not served with any kind of chargesheet or any opportunity to defend himself. He was asked to appear in a domestic enquiry without knowing the charges/allegation against him. A perfunctory enquiry was conducted without observing the principles of natural justice wherein he was not given adequate opportunity to defend himself. At the enquiry he made oral submission and submitted documentary evidences which were not accepted. He was not supplied with the copies of the enquiry proceedings and also was supplied with the copy of the enquiry report. The concerned workman has not received any letter of dismissal from the employer uptil now, though the employers claim that he has been dismissed from service. The employers appointed Enquiry Officer without ensuring that a chargesheet was issued to him and without considering the reply of the chargesheet indicates that the employers were bent upon to victimise

the concerned workman and to get rid of him somehow of other with some ulterior motive to harass him probably for his trade union activities.

It has been prayed before the Hon'ble Tribunal to pass an award in favour of the workman by directing the management to reinstate the concerned workman with full back wages.

3. Written statement has been filed by the management stating that the concerned workman was working at Rajrappa Washery project of M/s. CCL and he was charge-sheeted by the managements of Rajrappa Washery Project for unauthorised absence vide charge-sheet dated 15-11-89 and the management of Rajrappa Washery Project dismissed him w.e.f. 21-5-90 for unauthorised absence. Thereafter vide order dated 21-4-93 he was reinstated and posted at Bachra. He never worked in Bachra Project regularly and continuously. The concerned workman started absenting from his duty w.e.f. 27-1-94 and the management issued a charge-sheet in respect of unauthorised absence. After the concerned workman submitted his reply but his reply was not found satisfactory by the management. However, the management taken lenient view and allowed him to resume his duty w.e.f. 21-6-94 with strong warning. As again started absenting from duty w.e.f. 16-7-94 without information and permission from the management. The management issued charge-sheet vide charge-sheet dated 23-8-94 with an advice to report for duty or submit his explanation within seven days. The concerned workman had not submitted the reply to the charge-sheet. The management having no alternative initiated departmental enquiry and appointed Enquiry Officer, who conducted the domestic enquiry according to the principle of natural justice. The concerned workman appeared before the domestic enquiry and participated in the enquiry and he was given full opportunity to defend in the enquiry. After conducting enquiry, the Enquiry Officer submitted his report holding therein that the workman concerned committed the misconduct and on the basis of that report he was dismissed by the management on proved misconduct. The dismissal of the concerned workman is legal and justified.

It has been prayed before this Hon'ble Tribunal to kindly hold that the action of the management in dismissing the workman concerned w.e.f. 24-12-94 is legal and justified and he is not entitled for any relief.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The management has produced MW-1 - J. Tiwary, and documents have been marked as Exts. M-1 to M-9 waiving the formal proof.

The concerned workman died on 22-11-2002 during the pendency of the case. Smt. Bharati Roy W/o Late

S. K. Roy filed an Affidavit regarding the fact of death of her husband on 22-11-2002 and moved substitution petition in place of her husband, who has been substituted in the reference.

6. The enquiry was held fair and proper on 16-2-2005 by this Tribunal.

7. Arguments heard. It has been argued on behalf of the concerned workman that he has been dismissed from service w.e.f. 24-12-94 by the management. He was working as Electrical Fitter in Bachra Project of C.C.L. He was not provided with any accommodation at his place of work, as such his family was residing at Swang Colliery. So he took one day's casual leave on 4-9-94 for going to Swang Colliery for some urgent work. He fell ill at Swang and was admitted in Swang Colliery Hospital of M/s. C.C.L. for treatment from 6-9-94. He informed about his illness to the Manager of the Colliery in writing as per Regd. A.D. Post which was received by his office on 12-9-94. He was treated at Swang Colliery Hospital from 6-9-94 to 16-9-94 and he was declared fit to resume duty on 16-9-94. On the basis of that fit certificate the concerned workman submitted his joining report, but he was not allowed to join his duty. He was not served with any kind chargesheet or any opportunity to defend himself. He was asked to appear in a domestic enquiry without knowing the charges levelled against him. The enquiry was conducted violating the principles of natural justice. He was not supplied with the copy of enquiry report before dismissal. So he is entitled for reinstatement with full back wages.

8. The management's counsel argued that he was charge-sheeted for unauthorised absence vide charge-sheet dated 15-11-89 and he was dismissed from service from 21-5-90. But later on vide order dated 21-4-93 he was reinstated and posted at Bachra. Then the concerned workman started absenting from his duty w.e.f. 27-1-94 and the management issued a chargesheet in respect of unauthorised absence. The concerned workman submitted his reply but his reply was not found satisfactory by the management. The management taking lenient view allowed the concerned workman to resume his duty w.e.f. 21-6-94 with strong warning. The concerned workman again started absenting from duty w.e.f. 16-7-94 without information and permission from the management, and the management issued charge-sheet vide charge-sheet dated 23-8-94 with an advice to report for duty or submit his explanation within seven days. The concerned workman did not submit his reply to the chargesheet. The management initiated departmental enquiry and appointed Enquiry Officer, who conducted the domestic enquiry and the concerned workman participated in the enquiry and he was given full opportunity to defend in the enquiry. The Enquiry Officer submitted his report holding therein that

the workman concerned committed the misconduct and on the basis of that report he was dismissed from service.

9. In this respect the evidence of management's witness - MW-1-J.Tiwary is very such material, who has stated "I do not know whether prior to the passing of the order of dismissal the concerned workman was served with the copy of the enquiry report or not."

10. In this respect the workman's representative argued that the management has not filed any document which may show that the charge-sheet was served to the concerned workman and when chargesheet was not served he was unable to submit his reply.

MW-1 also stated in cross-examination that- "I do not know whether the reply to the said charge-sheet has been filed in the instant case or not submitted by the concerned workman. This statement shows violation of principles of natural justice and law laid down by the Hon'ble Supreme Court, before passing final order copy of enquiry report must be given to the employee for second time on the point of dismissal. But the management has not proved that the concerned workman was given any notice of enquiry before passing dismissal order. Ext.M-9 shows that dismissal order was passed against the concerned workman without giving him second show-cause with enquiry report and proceeding. Moreover, above enquiry report page 14 (Ext. M-8) shows that the concerned workman reported regarding his illness which was received on 12-9-94 and 15-9-94. But corresponding to his absence period and the date i.e. 16-7-94 from which he actually absented is much delayed and was not matching. It shows that he moved his application regarding sickness. When he did not return in time which was fault on the part of the concerned workman. In the enquiry report (Ext. M-8) at page 3 the management's witness has admitted that he has received sickness certificate on 15-9-94 from the concerned workman and again he admitted that he received another information on 12-9-94. So, it only shows that the concerned workman moved his application regarding sickness, but it was not considered by the management nor any speaking order was passed that his leave is regretted. Ext. M-5 shows that notices regarding order of enquiry, but there is no proof that the above notice has been served to the concerned workman or not. Without hearing the concerned workman, he has been dismissed from service. Regarding previous absence, Ext. M-1 which has got no relevancy in the present case because management has to prove his absence without any information and it was a gross misconduct for that he has been dismissed from service.

In this respect the concerned workman referred 2003 Lab. I. C. 19 in which Hon'ble Supreme Court laid down- Employee absent from duty for 38 days - Only fault he had committed was failure to apply for leave even during absence of 38 days-His service record was otherwise clean

- Punishment of dismissal for absence of 38 days is harsh and shockingly disproportionate - Can be safely categorised as 'legal victimisation'- Ought not to have been apporved by Tribunal under Sec. 33 (2) (b). The Hon'ble Supreme Court in the case of Colour Chem. Vs. A. L. Alaspurker reported in (1998) Our LR 638: (1998 Lab I. C. 1974) (SC) has laid down the law that if a punishment is disproportionate, very harsh and shockingly disproportionate in that case it would be open to the Court or Tribunal to draw an inference of legal victimisation or legal malice or legal mala fides. According to the Supreme Court in that case the test of a reasonable man has to be applied. If such a reasonable man comes to a conclusion to impose a punishment which is commensurate with the misconduct levelled against the workman in that case no inference would be warranted. However, if the punishment is not commensurate with the charges levelled against the workman and that punishment is shockingly disproportionate to that case it would be open for the Court or Tribunal to interfere with such punishment. I shows that only on the ground of absenteeism the concerned workman was dismissed from services without giving notice of enquiry and without serving second show cause notice and enquiry report.

In view of the above facts and circumstances it is held that the dismissal of S. K. Roy is unjustified and since the concerned workman died on 22-11-2002 he will be entitled to 50% back wages with effect from his dismissal i.e. from 24-12-94 till his death i.e. 22-11-2002.

11. In the result, I render the following award :

The dismissal of S. K. Roy, Electrical Fitter, from the services with effect from 24-12-1994 by the management of Bachra Project of M/s. C. C. Ltd. is not justified. Since the concerned workman, during the pendency of the case, died on 21-11-2002, he will be entitled to 50% back wages with effect from the date of his dismissal (24-12-94) till his date of death (22-11-2002) with all consequential benefits including retiral benefits. The management is directed to implement the award within 30 days from the date of publication of the award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 28 जनवरी, 2010

का.आ. 581.- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, धनबाद के पंचाट (संदर्भ संख्या 326/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2010 को प्राप्त हुआ था।

[सं. एल-20012/221/2000-आईआर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 28th January, 2010

S.O. 581.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 326/2000) of the Central Government Industrial Tribunal/Labour Court, No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 28-1-2010.

[No. L-20012/221/2000-IR (C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of a reference U/S. 10 (1) (d) (2A) of I. D. Act.

REFERENCE No. 326 of 2000

Parties:

Employers in relation to the management of M/S. Bharat Cooking Coal Ltd.

AND

Their Workmen.

Present: Shri H.M. SINGH, Presiding Officer

APPEARANCES

For the Employers : None

For the Workman : None

State: Jharkhand

Industry : Coal

Dated, the 11th January, 2010

AWARD

By Order No. L -20012/221/2000/IR (C-I) dated 25-10-2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of I. D. Act, 1947, referred the following dispute for adjudication to this Tribunal :

“ Kyaa B.C.C.L., Kustore Kshetrakey Pravandhtahtra dwara Sri Ram Deo Wasi, Munshi, Alkusa Colliery ki Janm Tarikh 1-7-1940 mantey huey unkri dinank 1-7-2000 sey nivrit kiya jana uuchit even naya sangat hai? Yadinahi to karmkar kis rahat key patra hain?”

2. This reference was received in this Tribunal on 21-11-2000. In spite of sending notice to the parties no written statement has been filed by the workman. It

is needless to keep this file pending for filing written statement further. It, therefore, appears that neither the concerned workman or the sponsoring union is interested to contest the case.

In such circumstances, I render the ‘No Dispute’ Award in the present reference case.

H. M. SINGH, Presiding Officer

नई दिल्ली, 28 जनवरी, 2010

का.आ. 582.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी. सी.एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, सं. 1, धनबाद के पंचाट (संदर्भ संख्या 65/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2010 को प्राप्त हुआ था।

[सं. एल-20012/640/97-आईआर (सी-1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 28th January, 2010

S.O. 582.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 65/98) of the Central Government Industrial Tribunal/Labour Court, No.1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 28-1-2010.

[No. L-20012/640/97-IR (C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of a reference U/S. 10 (1) (d) (2A) of Industrial Disputes Act, 1947.

REFERENCE No. 65 of 1998

Parties:

Employers in relation to the management of Gopalichak Colliery of M/S. B.C.C.L.

AND

Their Workmen.

Present: Shri H. M. SINGH, Presiding Officer

APPEARANCES

For the Employers : Shri H. Nath, Advocate

For the Workman : Shri Ram Ratan Ram, Secretary,
Bahujan Mazdoor Union.

State: Jharkhand

Industry : Coal

Dated, the 20th January, 2010

AWARD

By Order No. L -20012/640/97/IR (C-I) dated 14-8-98 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of I. D. Act, 1947, referred the following dispute for adjudication to this Tribunal:

“Whether the action of the management of Gopalichak Colliery of M/S. B.C.C.L. in not regularising Sri Ashok Kumar Rowani and 28 others in the services of M/s. BCCL and unjustified stoppage of these workmen from work from February, 1991 is legal & justified? If not, to what relief the workman are entitled?”

2. Written statement has been filed on behalf of the workmen stating that S/Sri Ashok Kumar Rowani and 28 others had been working as permanent workmen in Gopalichak Colliery since long continuously with unblemished record of services since 1988. They were performing the job in the underground mine and an same occasion on the surface. They were working under the direct control and supervision of the management. They have put in 240 days attendance in each calendar year. All the implements for execution of the jobs were being supplied by the management. They were also engaged by the management in the prohibited category of jobs of cleaning. To camouflage the real issue and to conceal the real facts the management had been disbursing lose wage then prescribed NCWA' wage in the name of so-called Co-operative Society. According to NCWA the concerned workman were entitled to receive at least Cat. ' wages. To prepare perfect paper arrangement and to camouflage the real facts the management used to prepare bills in the name of one Sri Naresh Kumar Paswan. The concerned workman represented before the management several times for their regularisation and Category-I wages as per NCWA but without any effect. Thereafter dispute was referred to the A.L.C. (C), Dhanbad which ended in resulting to the present reference.

It has been prayed that an award to passed in favour of the workmen by directing the management to reinstate the concerned workman as Category-I Mazdoors on regularisation with retrospective effect with all arrear of wages and consequential benefits.

3. Written statement has been filed by the management stating that the sponsoring union, as per their usual practices, sponsored the case of the concerned persons to provide them employment in the Public Sector Undertaking with the help of litigation and raised the demand before the ALC for regularisation of the concerned workman claiming them to be members of Co-operative Society and having worked for same contract jobs under the Cooperative Society named “Shramik Sahayog Samiti Ltd.” It is submitted that large number of cases are made out in groups every one claiming to be members of Cooperative Society and demanding for their regularisation having served an workmen in respect of contract works awarded to them. It has been submitted that the sponsoring union has proceeded with malafide intention and it is quite probable they might have entered into conspiracy with the Secretary of the Cooperative Society and could have become the members of the Cooperative Society fraudulently and are claiming to have worked at Gopalichak Colliery which is obviously false having no merit at all. It has also been submitted that the State Government mobilised formation of Cooperative in the year 1989 and requested the management of the company to provide same casual nature of jobs to such labours of Cooperative Societies. The said Societies were advised to submit their tenders against small contract jobs being carried on casual basis like clearing of jungles on the surface or civil construction work on repairing and maintenance of Dhawrahs, cuartors or on some temporary nature of jobs required to be carried on from time to time. The cooperative societies used to enrol 10 to 12 persons as members and they used to perform certain jobs as contractor workers for earning their livelihood. It has been submitted that the Cooperative Societies so formed by the State Government acted for same period in the year 1989-90 with honesty but, they were actuated by malafide intention at the instigation of unions and started enrolling 100 of job seekers as members of the Cooperative Society and demanded for their regularisation and ultimately, the Labour Cooperative Societies formed by the State Government earned bad name and they have indulged in litigation for employment into the company's services discouraging the management from awarding contract to such Cooperative Societies and the scope for employment through contractor get reduced. It is submitted that the present case is one of such instance and mal practice and corruption by which many job seekers, some being relatives and friends of employees of the company or relative or trade union leaders and the present case is nothing but providing employment to such interested job seekers with the help of litigation. There is no truth in the assertion of the concerned persons that they had worked as contractor workers in the Cooperative Society or received payment

from the Cooperative Society or performed any jobs underground etc. All the claims of the sponsoring union having no merit at all, the concerned persons are not entitled to any relief.

In rejoinder to the written statement of the concerned workmen the management has stated almost same facts as have been stated in their written statement and denied some paragraphs of the written statement of the concerned workmen.

4. Rejoinder has been filed on behalf of the concerned workmen stating almost same things as have been stated in their written statement.

5. The management has produced MW-1 - Abhoy Nath Tiwary who has produced the document dated 22-4-91 slip which has been marked 'X' and 'X/1' for identification.

The concerned workmen have examined WW-1 - Kanchan Day in support of their case; and he has proved Exts. W-1 to W-6.

6. Main argument advanced on behalf of the workmen that they had been working since 1988 but the management has not regularised them. They were working through Co-operative Society, namely, Kalyan Shramik Sahayog Samiti Ltd. of Gopalichak Colliery of M/s. BCCL. The workmen filed Ext.W-2 noting sheet, Ext.W-3, work order and also letter addressed to Agent, Gopalichak Colliery, Ext.W-1 and another letter written by Secretary, Kalyan Shramik Sahayog Ltd., Ext.W-4, and for supply of Cap lamp to the labourers, Ext.W-5 and regarding regularisation of the workers, Ext.W-6.

7. The management argued that the concerned workmen were not performing regular type of work but worked casual nature of work from time to time. The co-operative Society used to engage 10 to 12 persons only for performing certain jobs as contractor workers. In this respect workmen's witness W-1 is very much material. WW-1 in cross-examination at page 3 stated that work-order used to be issued to the Kamgar Union as and when required, which shows that the work order being issued is casual nature as and when required and the concerned workmen were not discharging regular type of work of the management. The above witness has also stated that the society used to distribute the work of the workers. It only shows that the concerned workman had been working under the Society and they were not workmen of the management. The documents which have been filed by the concerned workmen shows that these are work orders which have been given for short, period and casual nature. Moreover, only 2 to 3 work orders has been filed by the concerned workmen from 1988 to 1992. It only shows that they have worked only for 2 to 3 times during above period for 4 to 5 years. There is no document which may presume that they were performing permanent nature of job with the management and the management to camouflage the

real issue, used to issue work order to Kalyan Shramik Sahyog Samiti, and or 'X' for identification. It does not show that the 28 persons had been working from 1988 to 1992 with the management and performing regular nature of job.

In view of the discussions made above, I came to the conclusion that the concerned workmen are not entitled to get any relief.

8. Accordingly, I render the following award-

The action of the management of Gopalichak Colliery of M/s BCCL in not regularising Sri Ashok Kumar Rowani and 28 others in the services of M/s. BCCL is justified and the concerned workmen are not entitled for any relief.

H. M. SINGH, Presiding Officer

नई दिल्ली, 1 फरवरी, 2010

का.आ. 583.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस.सी. सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (एल. सी. आई. डी. 28/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-2-2010 को प्राप्त हुआ था।

[सं. एल-22013/1/2010-आई.आर.(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 1st February, 2010

S.O. 583.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Hyderabad (L.C.I.D. No. 28/2007) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Singareni Collieries Company Ltd. and their workmen, which was received by the Central Government on 1-2-2010.

[No. I-22013/1/2010-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Shri VED PRAKASH GAUR Presiding Officer

Dated the 1st day of July, 2009

Industrial Dispute L. C. I. D. No. 28/2007

BETWEEN

Sri Jupaka Srinivas,

S/o J. Chandraiah,

R/o H. No. 14-1-163, C/o K. Sanjeevaiah,

Godavarikhani, Karimnagar district. Petitioner

AND

1. The Managing Director,
M/s. Singareni Collieries Company Ltd.,
Kothagudem.
2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
KTK 5 & 5A Incline Bhupalpalli.
3. The Medical Superintendent,
M/s. Singareni Collieries Company Ltd.,
Area Hospital, Godavarikhani,
4. The Chief Medical Superintendent,
M/s. Singareni Collieries Company Ltd.,
Main Hospital, Kothagudem,
5. Sri Dr. K. Mukunda Rao,
Chief Medical Superintendent,
M/s. Singareni Collieries Company Ltd.,
Main Hospital, Kothagudem,
6. The Corporate Medical Board,
M/s. Singareni Collieries Company Ltd.,
Main Hospital, Kothagudem,Respondents

APPEARANCES

For the Petitioner : M/s. A. Sarojana & K. Vasudeva
Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma &
Vijayalaxmi Panguluri, Advocates

ORDER

This is a case taken under Sec.2 A (2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No.8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Petitioner filed this petition against his illegal termination dated 15-12-2004. It is submitted that while the Petitioner was working as coal filler at KTK 5 & 5A Incline, Bhupalpalli, Warangal District, he has been illegally declared as medically unfit and also management has failed to provide alternate employment contrary to the terms/NCWA settlements. Thus, the Petitioner was terminated from service on 15-12-2004 basing on medical board's report contrary to the rules and settlements. He prays this court to direct the Respondents for his reinstatement and all other attendant benefits.

3. On 1-7-2009, both parties counsels present. Memo filed by the counsel for the Petitioner states that during the pendency of this LCID No. 28/2007, the Petitioner Jupaka Srinivas expired on 19-10-2008 and LR's are no more interested in prosecuting the above case, as such, the case may be closed as not pressed. In light of the memo dated 1-7-2009 the case is closed due to non-prosecution by LR's.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 1st day of July, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 फरवरी, 2010

का.आ. 584.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 179/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/134/1995-आई.आर.(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 1st February, 2010

S.O. 584.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 179/95) of the Central Government Industrial Tribunal-cum-Labour Court Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SECL and their workmen, which was received by the Central Government on 1-2-2010.

[No. L-22012/134/1995-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/179/95

Presiding Officer : SHRI MOHD. SHAKIR HASAN

The General Secretary,
Koyla Mazdoor Sabha (UTUC),
Post Dhanpuri,
Distt. Shahdol (MP)

Workman/Union

Versus

The General Manager,
Sohagpur Area of SECL,
Post Dhanpuri,
Distt. Shahdol (MP)

Management

AWARD

Passed on this 13th day of January, 2010

1. The Government of India, Ministry of Labour vide its Notification No. L -22012/134/95-IR (C-II) dated 10-10-95 has referred the following dispute for adjudication by this tribunal:-

“Whether the action of the management of South Eastern Coalfields Limited, Sohagpur Area, Post Dhanpuri, Distt. Shahdol (MP) for not promoting Shri Samar Bahadur Singh from Dumper Operator, Group-B to Dumper Operator Group-A w.e.f. 7-3-88 is justified? If not, then what relief the workman is entitled to?”

2. The case of the workman, in short, is that the workman was working as Dumper Operator at Dhanpuri, OCM and was promoted as Dumper Operator Group B (Excavation) on 1-1-1983 alongwith other operators. Thereafter he was transferred to Sharda OCM from Dhanpuri OCM as that was a new project. Since he was transferred to Sharda OCM, he was debarred from promotion. The other Dumper Operator Gr. B were promoted to Gr. A who were similarly promoted alongwith him in Grade B. It is stated that the workman filed representation but no action was taken. The workman claims that he is entitled to be promoted in Dumper Operator Gr. A w.e.f. 7-3-1988.

3. The non-applicant/management appeared and filed Written Statement. The case of the non-applicant, inter alia, is that the workman Shri Samar Bahadur Singh was Dumper Operator and he was promoted to Dumper Operator, Grade B and was transferred to Sharda OCM alongwith other workmen. It is stated that the promotion from Dumper Operator, Gr. B to Dumper Operator Gr. A is done in accordance with cadre scheme on the basis of unit. There was no promotion done from Dumper Operator Group-B to Group-A at the unit of Sharda OCM. It is stated that there was no Dumper at Sharda OCM of the capacity of Dumper Operator Gr. A. The workman has also superannuated from the service w.e.f. 28-2-2002. It is submitted that the workman is not entitled to any relief.

4. The workman after filing his statement of claim absented. The then Tribunal proceeded exparte on 1-7-2008 against the workman.

5. The only point for consideration is as to whether the workman was entitled to be promoted as Dumper Operator, Gr. A w.e.f. 7-3-88.

6. The management has examined one witness in the case. Shri N. Shashikaran is Senior Personnel Officer at Sharda Project, SECL, Sohagpur Area. He has stated that the workman was working as Dumper Operator Grade B at khuli Mine of Sohagpur Area. He has stated that the promotion is to be done in accordance with cadre scheme and Paper No. 6/4 to 6/6 is the cadre scheme. He has also supported this fact that the workman has already retired from service w.e.f. 28-2-2002. He has stated that his promotion is against the rules of the company. There is no evidence to rebut his evidence. Moreover the burden was on the workman that he was not promoted in accordance with rules and there is no evidence on behalf of the workman. Accordingly the reference is answered in favour of the non-applicant/management and against the workman.

7. In the result, the award is passed exparte against the workman without any order to costs.

8. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 1 फरवरी, 2010

का. आ. 585.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 187/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/164/1993-आईआर(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 1st February, 2010

S.O. 585.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 187/93) of the Central Government Industrial Tribunal, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SECL and their workman, which was received by the Central Government on 1-2-2010.

[No. L-22012/164/1993-IR(C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-LABOUR-COURT
JABALPUR

No. CGIT/LC/R/187/1993

Presiding Officer : Shri Mohd Shakir Hasan

The Secretary,
M.P. Koyla Mazdoor Sabha (HMS),
North Chirimiri Branch,
Post- Gelhapani,
Distt. Suguja (MP)Workman/Union

Versus

Sub Area Manager,
Noth chirimiri Colliery of SECL
Post North Chirimiri Colliery,
Distt. Surguja (MP)Management

AWARD

Passed on this 14th day of January, 2010

1. The Government of India Ministry of Labour vide its Notification No.L- 22012/164/93-IR(C-II) dated 13-9-93 has referred the following dispute for adjudication by this tribunal:-

“ Whether the action of the Sub-Area Manager, North Chirimiri Colliery of Chirimiri area of SECL in dismissing Shri Dhannulal S/o Bhopal, Pump Khalasi, Category-II from compay services w.e.f 29-12-89 is legal and justified? It not, to what relief the workman is entitled to?”

2. The Union appeared in the case but did not file statement of claim in spite of sufficient opportunity provided to the Union. Lastly the Union became absent. As such, the then Tribunal proceeded the proceeding ex parte on 3-4-2008 against the Union.

3. The Non-applicant/management filed written statement in the case. The case, in short is that the present dispute is raised after about four years at a belated stage. The further case is that the workmen Shri Dhannulal was Pump Kalasi, Cat-I at Gurghella Incline. North Chirimiri Colliery. He was on duty in the 2nd shift at Gurghella Incline on 7-5-1989 but he was absent from his duty and was found roaming around the colony by the Incline Incharge Shri N. K. Sharma without permission. The Incline Incharge marked him absent on the said date. Thereafter the said worker came and abused him and threatened him with dire consequences. Shri Sharma reported the matter to the authority. A report was also received from Shri Ramjeevar Singh Mining Sardar. The charge was served on him under clause 20 (5) and 20 (18) of the Certified Standing Orders. The reply of the workman was found unsatisfactory and a departmental enquiry was constituted. Shri R. P. Gupta, ACM, Duman Hill Colliery was appointed as Enquiry Officer (in short E.O.) and Shri A.D. Dubey Sr. Under Manager was appointed as Management Representative

(in Short M.R.) The delinquent workman and his co-worker participated in the proceeding. The witness were examined and cross-examined by the delinquent worker/co-worker. Thereafter five defence witness were also examined. The E.O. submitted the Enquiry report holding the delinquent workman guilty of the charges. The proposed punishment was also recommended by various officers. The disciplinary authority after persuing the enquiry report and the relevant documents convinced that the charges level against the delinquent workman were proved and established and passed the order of dismissal from the service of the workman. It is stated that the management has conducted a fair and proper departmental enquiry in conformity with the provisions of natural justice. The management submits that considering the gravity of misconduct committed by the workman the punishment imposed on him is just and proper. It is submitted that the award be passed in favour of the management.

4. The following issues are for adjudication:—

(1) Whether the Departmental proceeding was proper and valid?

(2) Whether the punishment imposed on the workman was just and proper?

5. **Issue No. 1:-** To prove the case, the management has examined one witness namely Shri N. R. Das. He is working as Personnel Manager at North Chirimiri Colliery, Duman Hill of SECL. He has also proved the papers of departmental enquiry. His evidence shows that the delinquent workman participated in the proceeding along with his co-worker. His co-worker had cross-examined all the witnesses of the management. The evidence further shows that the delinquent workman had also adduced defence witnesses in the proceeding. The Enquiry Officer after considering the oral evidence and the documents filed by the M. R. came to the conclusion that the charges are proved. I find that the principle of natural justice is not violated and full opportunity was given to the workman. There is no evidence to impeach the credit of the evidence adduced by the management. Hence it is held that the departmental proceeding was valid and legal. This issue is decided in favour of the management.

6. **Issue No. 2:** Another question is as to whether the punishment was just and proper. On perusal of proceeding of the departmental enquiry as has been proved in the case, it is clear that the workman was found absent from duty and when his attendance was marked absent, he abused and threatened for dire consequences. The management witness in his evidence has also substantiated the said facts. It also appears from the evidence that such complaint was also made by other officers. Considering the above facts, I find that the punishment imposed on the workman is just and proper and no interference is required. This issue is also decided accordingly.

7. In the result, the award is passed ex parte against the workman without any order to costs.

8. Let the copies of the award be sent to the Government of India, Ministry of Labour and Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 1 फरवरी, 2010

का. आ. 586.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं एस.ई. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 91/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/454/2006-आईआर(सी-11)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 1st February, 2010

S. O. 586.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 91/1995) of the Central Government Industrial Tribunal-cum-Labours Court Jabalpur, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SECL and their workman, which was received by the Central Government on 1-02-2010.

[No. I-22012/454/2006-IR(C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/91/1995

Presiding Officer : Shri Mohd. Shakir Hasan

The Secretary,

M.P. Koyla Mazdoor Sabha (HMS),

Post-South Jhagrakhand Colliery,

Distt. Surguja (MP) Workman/Union

Versus

Sub Area Manager,

Bhatgaon Area of SECL

Post Bhatgaon Colliery,

Distt. Surguja (MP) Management

AWARD

Passed on this 18th day of January, 2010

1. The Government of India Ministry of Labour vide its Notification No. I- 22012/454/94-IR(C-II) dated 25-5-95 has referred the following dispute for adjudication by this tribunal:-

" Whether the action of the management of Bhatgaon Colliery of Bishrampur Area of SECL on employing

17 workmen (List attached on) the tub repairing work between the period 1979 to 1990 as contract labour was bonafide or it was camouflage? What relief are these workmen entitled to?"

2. The case of the Union/workman, in short, is that Shri Devki Prasad Vishwakarma and 16 others were working as tub repairing workers in Bhatgaon colliery of Bishrampur Area of SECL till 1990. The tub repairing workers repair the tub in the workshop within the mines premises of Bhatgaon. They were required to go inside the mine also to repair the tubs. The management of SECL deprived there workmen of the wages of Category-II as prescribed in various National Coal Wage agreements. The entire payment of wages made on the name of Shri Devki Prasad Vishwakarma depicting him as a contractor which was a camouflage and thereafter paid to the individual workmen. These workmen worked from 1979 to 1990 and therefore the work was of perennial and regular in nature.

3. It is stated that the work performed by these workmen was of SECL. Tubs and materials used for the repairs was of SECL, the work was carried on within the premises of mines, underground as well as outside the mines and these workmen worked for raising the coal to facilitate its transportation from inside the mine and as such came within the prohibited category of work. These workmen had also given vocational training but the certificate was not issued to them. These workmen had worked under the control, direction and supervision of the management of Bhatgaon Colliery. It is stated that similar dispute arose of tub repairing labour in Hasdeo Area and was referred to arbitrator and it was resolved by mutual agreement. Those tub repairing workers were regularized and were paid wages as per Cat-II. These workmen had completed more than 240/190 days attendance in a year. They have been terminated without complying the provision of Section 25-F of the I. D. Act. It is submitted that the reference be answered in favour of the workmen.

4. The non-applicant/management appeared and filed written statement in the case. The case of the management, inter alia, is that the reference is patently illegal. It is stated that the applicant Union is one of the Union under the three tire I. R. System of the company. The Union used to discuss and settle the demands under three tire I. R. System of the company. This Union has never raised this issue at any stage under three tire I. R. System of the company. This issue of tub repairing workmen was also raised by the AITUC (SKMS Union) who is said to have been authorized by the Tub-repairing Workers of Bhatgaon Colliery and thus the dispute raised by the Secretary of MPKMS (HMS) is not maintainable. It is denied that the Tub-repairing workers worked from 1979 to 1990 and the work was of perennial and regular in nature. It is stated that the entire underground working of Bhatgaon Colliery were mechanized from 1988-89 and since then there was no tub loading at all in the Mine. Thereafter the engagement of

Tub-repairing workers did not arise. Moreover the work of Tub repairing was done on contract basis on arising urgency. The contractor engaged workers for tub repair. It is denied that there was any supervision of the management on contractor's workers. The work was not of prohibited category. Under the circumstances, they are not entitled to any relief.

5. After filing statement of claim, the Union/workmen became absent and did not adduce any evidence inspite of several opportunities given to the Union. Lastly the then Tribunal proceeded the reference exparte against the Union/workmen on 22-5-2008.

6. The only question is as to whether the action of the management in employing 17 workmen as contract labour was bonafide or it was camouflage?

7. To prove the case the management has adduced evidence. The management witness, Shri V. S. Seth is working as sub Area Manager in Bhatgaon Sub Area. He has stated that there are six Unions operating in this company and have agreed in principle three tire I.R. System of the company. The applicant Union i.e. MPKMS (HMS) has neither raised this issue nor discussed under three tire I.R. System of the company. He has further stated that another Union namely SKMS (AITUC) had given to the management that the concerned Tub repairing workers had authorised this Union in writing. There is no evidence on the record to show that the applicant Union was authorized by the alleged workmen. This shows that the applicant Union is not authorized to raise the issue.

8. This witness has further stated in his evidence that the work of tub repair is done on contract basis when urgency arises. The workers are engaged by the contractors for repair and they are not employers of the company. There is no relationship of employer and employees between the management and the workers. The contractor gets the work order and has to complete the work to the satisfaction of all concerned. He has stated thrt the Bhatgaon Colliery was mechanized and now this job is not in existence. His evidence has not been rebutted. There is no reason to disbelieve his evidence. His evidence clearly shows that there is no relationship of employer and employees between the management and the workers. Accordingly the reference is answered in favour of the management.

9. In the result, the award is passed exparte against the Union without any order to costs.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour and Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 1 फरवरी, 2010

का. आ. 587.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं एस.सी.सी.एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 23/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/69/2006-आईआर(सीएम II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 1st February, 2010

S. O. 587.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2007) of the Central Government Industrial Tribunal-cum-Labour-Court, Hyderabad, as shown in the Annexure in the Industrial Dispute between the management of M/s Singareni Collieries Company Limited and their workman, which was received by the Central Government on 1-02-2010.

[No. L-22012/69/2006-IRCM-II]

AJAY KUMAR GAUR, D. O. Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR-COURT AT HYDERABAD

Present : Sri Ved Prakash Gaur, Presiding Officer.

Dated the 19th of March, 2009

Industrial Dispute No. 23/2007

BETWEEN

The General Secretary
(Sri Bandari Satyanarayana),
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markendeya Colony,
Godavarikhani, Karimnagar Distt.-505209Petitioner

AND

The General Manager,
M/s. Singareni Collieries Co. Ltd.,
Mandamarri Division,
Mandamarri,
Adilabad District.Respondent

APPEARANCES

For the Petitioner Nil

For the Respondent Nil

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/69/2006-IR (CM II) dated 19-3-2007 referred the following dispute under Section 10(1)(d) of the ID Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Co. Ltd. and their workman. The reference is:

SCHEDULE

"Whether the action of the management of M/s. Singareni Collieries Co. Ltd., in terminating the services of Sri Marri Kumara Swamy with effect from 21-12-1998 is legal and justified? If not, to what relief is the workman entitled?"

The reference is numbered in this Tribunal as I.D. No. 23/2007 and notices were issued to the parties.

2. On 19-3-2009 Petitioner called absent and also absent for last several dates. He has not filed claim statement even after more than one and half years of receipt of this reference and after service of notice. It appears that Petitioner is not interested to pursue his case. Hence, the case is closed in absence of claim statement and a "Nil" Award is passed. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her, corrected and pronounced by me on this the 19th day of March, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witness examined for the Respondent
Nil	Nil

Documents marked for the Petitioner

Nil

Documents marked for the Respondent.

Nil

नई दिल्ली, 1 फरवरी, 2010

का. आ. 588.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं ई.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 35/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/11/2007-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 1st February, 2010

S. O. 588.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/2007) of the Central Government Industrial Tribunal, cum-Labour Court, Asansol, as shown in the Annexure in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited and their workman, received by the Central Government on 01-02-2010.

[No. L-22012/11/2007-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-LABOUR COURT,
ASANSOL**

Present Sri Manoranjan Pattnaik, Presiding Officer.

Reference No. 35 of 2007

Parties : The Agent, Khas Kajora Colliery of M/s.
ECL, Kajagram,
Burdwan.

Vis.

Vice President, Koyla Mazdoor Congress,
Andal More, P.O. Andal, Burdwan

REPRESENTATIVES

For the management P.K. Das, Advocate

For the Union (Workman) P.C. Pandey, Vice-President,
CMC

Industry : Coal State : West Bengal

Dated, the 15th January, 2010

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/11/2007-IR(CM-II) dated 26-6-2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Khas Kajora Colliery of M/s. ECL in dismissing Md. Tayub w.e.f. 8-3-2004 is legal and justified? If not, to what relief is the workman entitled?"

Having received the Order No. L-22012/11/2007-IR(CM-II) dated 26-6-2007 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 35 of 2007 was registered on 11-7-2007 and, accordingly, an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned and they made their appearance. However, a petition dated 15-12-2009 was filed by the Vee-President, CMC(HMS) (KMC) praying for withdrawal of the dispute along with a copy of Form 'H' containing the terms and conditions of settlement. There is no need for further proceeding. The Industrial Dispute no more exist and, hence, an award to that effect is to be passed accordingly.

ORDERED

Let an "Award" be and same is passed as per above. The terms in form 'H' to Form part of the award. Send the

copies of the award to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

MANORANJAN PATTNAIK, Presiding Officer

नई दिल्ली, 2 फरवरी, 2010

का. आ. 589.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सेन्ट्रल गवर्नमेंट हेल्थ स्कीम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं.-1, नई दिल्ली के पंचाट (संदर्भ संख्या 8/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-42011/61/2006-आईआर(डी. यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S. O. 589.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/2007) of the Central Government Industrial Tribunal-cum-Labour-Court No.-1, New Delhi, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Government Health Scheme and their workman, which was received by the Central Government on 02-02-2010.

[No. L-42011/61/2006-IR(D. U.)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, NEW DELHI, KARKARDOOMA COURT**

COMPLEX, DELHI

I.D.No. 8/2007

Vijender Singh;

Through All India Labour Association,

House No.60-E, Sector IV, DIZ

Area, Gole Market, New Delhi 110001Workman

Versus

The Director,

Central Govt. Health Scheme,

M/o Health, Govt. of India,

Nirman Bhawan,

New Delhi.

.....Management

AWARD

Shri Vijender Singh Tyagi joined Northern Railway Central Hospital, New Delhi, as Pharmacist on 11-2-74. He was suspended on 29-7-80 and charge sheeted for acts of misconduct, committed by him during the course of his service. He remained under suspension till 28-4-83. Ultimately he was awarded major penalty of compulsory retirement on 16-9-2000.

2. During the course of his suspension by the authorities of Railway Hospital, he fraudulently obtained a scheduled caste certificate. On the basis of the said certificate, he got an appointment to the post of Pharmacist with the management on 7-10-82. He was residing in Government accommodation viz quarter No.10/12 Sewa Nagar, New Delhi since 1976. He fraudulently claimed house rent allowance from the management from 7th of October, 1982, till 31st of January, 2000. A case was registered against him by the Central Bureau of Investigation for offences punishable under Sections 420, 467, 468 and 471 of the Penal Code. C.B.I had seized all his service records from the management, including his service book.

3. While being in service of the management, he was promoted to the post of Senior Pharmacist in the scale of Rs.1600—2660 w.e.f. 11-7-95. His pay could not be fixed in appropriate scale, in accordance with the recommendation of Fourth and Fifth Central Pay Commission. He made a claim in that regard, but the management could not do the needful. Under the banner of All India Labour Association, he raised a dispute before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal for adjudication, vide Order No.L-42011/61/2006-IR(DU), New Delhi, dated 23-1-2007, with following terms:

“Whether the demand of All India Labour Association for fixation of pay of Shri Vijender Singh, Senior Pharmacist, while the Service Book of the workman is in the custody of the C.B.I. Anti Corruption Branch, is legal and justified? If so, to what relief the workman is entitled to?”

4. Claim statement was filed by Vijender Singh pleading therein that he joined services of the management as Pharmacist on 7-10-1982 in the pay scale of Rs. 330-560. His duties consist of preparation of medicinal mixture and to distribute it to the patients, as per prescription of the physician. He has to maintain account of medicines consumed each day in a register. He is a workman within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947 (in short the Act). He has been exposing himself to the cause of workers, hence he became a target of victimization on account of his trade union activities. Recommendations of Fourth Central Pay Commission

became effective from 1-1-86. His pay was to be fixed in the scale of Rs. 1350-2200. On 31-12-95 he was upgraded in the scale of Rs. 1600-2660, but his pay was not fixed in that scale. Recommendation of Fifth Central Pay Commission became effective from 1.1.96. His pay was to be fixed in the grade of Rs. 5000-8000 but to no avail. In the year 2000 he was given ACP. He is entitled for second ACP on 8-10-2006, in the scale of Rs. 6500-10500. His pay has not been fixed nor he has been granted benefit of conversion of 50% D.A. into Dearness Pay. He claims that his pay may be fixed in the appropriate scales and management may be directed to release all his benefits with 18% interest thereon.

5. Contest was given to his claim by the management pleading that he was appointed against a post of Pharmacist, which is a civil post. He is not a workman within the meaning of clause (s) of section 2 of the Act. Management pleads that while being in the service of Northern Railway Central Hospital, New Delhi, he fraudulently obtained the job of Pharmacist on 7-10-82, on the basis of a forged scheduled caste certificate. Though he was residing in a government accommodation, yet he claimed house rent allowance from 7-10-82 till 31-3-2000. A case was registered against him by the C.B.I. and all his service records including his service book were seized. It has been pleaded that the management is not an industry and no industrial dispute has been referred for adjudication. Since service records of the claimant are in possession of C.B.I. the management is not in a position to take an action in accordance with law. It has been claimed that claim put forward is not maintainable.

6. Vijender Singh entered in the witness box to testify facts on 7-8-2009. His testimony remained incomplete. Thereafter he opted not to come forward to substantiate his claim. He abstained to put his attendance on 16-9-2009 and thereafter. The Tribunal was constrained to proceed with the matter under rule 22 of the Industrial Disputes (Central) Rules 1957. Hence evidence of the claimant was closed. Neither his testimony was concluded nor an opportunity was given to the management to purify it by an ordeal of cross examination. Incomplete testimony of Vijender Singh does not answer the standards of legal evidence. Consequently testimony of Vijender Singh cannot be called legal evidence and is brushed aside from being considered for adjudication of his claim.

7. As emerge out of the record, demand was raised by All India Association for fixation of pay of Shri Vijender Singh. Whether by raising the demand, the Association could raise an industrial dispute. For an answer, legal provisions are to be taken in to account. Provisions of section 10 of the Act make it clear that the appropriate Government may refer an existing or apprehended dispute

to the Industrial Tribunal for adjudication. Industrial dispute has been defined by clause (k) of section 2 of the Act, Definition given in the said sub-section encompasses within its sweep any dispute or difference between the employer and employers, or between employer and workmen or between workmen and workmen, which is connected with the employment or non employment or terms of employment or with the conditions of labour of any person. The Act is a legislation relating to what is known as "collective bargaining" in the economic field. This policy of the legislature is also implicit in the definition of the industrial dispute.

8. The Apex Court in *Bombay Union of Journalists [1961 (11) LLJ 436]* has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an "individual dispute" into an "industrial dispute", it has to be established that it had been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, as the workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But the difficulties arise when the cause of a workman, in a particular establishment, is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. Representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment, in which the concerned workman was employee, were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively supported the dispute.

9. What a substantial or considerable number of workmen would in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves

who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an "industrial dispute". The Tribunal has, therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P.Somasundrameran (1970(I)LLJ 558).

10. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works (1970 (1)LLJ 507) complaints relating to dispute of ten workmen were filed before the conciliation officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus the cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

11. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a number of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the

continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited (1974(II) LLJ 34). For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co. Ltd. (1970(II)LLJ .256).

12. As projected through the terms of reference, the dispute relates to fixation of pay of Shri Vijender Singh. It is not a dispute relating to discharge, dismissal, retrenchment or otherwise termination of service of Vijender Singh, to cover it within the ambit of section 2 A of the Act. For bringing such a dispute within the ambit of industrial dispute, it should have been espoused by representative union of the establishment of the management. No evidence worth name has come forward to show that All India Labour Association is the union of the establishment of the management.

There is a vacuum of evidence to indicate that the dispute was espoused by the All India Labour Association for adjudication. For want of evidence, this Tribunal cannot conclude that the dispute was espoused by a representative union of the establishment of the management. Consequently it is apparent that it has not been brought over the record that an industrial dispute was in existence, which was referred by the appropriate government to this Tribunal for adjudication.

13. The term of reference makes it clear that service book of the workman was in the custody of C.B.I., since a case of fraud and cheating was registered and under investigation. Management pleads that the claimant was in the service of Northern Railway Central Hospital, New Delhi, from where he was compulsorily retired on 16-9-2000. It has been projected that he was under suspension between 19-7-80 till 28-4-83. During that period he fraudulently obtained a forged scheduled caste certificate and on the strength of the said certificate he fraudulently got the job with the management, where he joined on 7-10-82. No attempt was made on behalf of the claimant to dispel these facts.

14. Out of facts detailed by the claimant as well as the CGHS, it has been brought to my notice that claimant was employed with Northern Railway Central Hospital,

New Delhi in 1974, from where he was compulsorily retired on 16-9-2000. It is crystal clear that the claimant was on the roll of Northern Railway Central Hospital upto 16-9-2000. In his claim statement he claims to have joined CGHS on 7-10-82. Rule 15 of Central Civil Services (Conduct) Rules, 1964 prohibits a Government servant to initiate or undertake any other employment. Supplementary Rule 11 prohibits a Government servant from undertaking work from another government or a private or public body or private person or to accept fee therefrom, without sanction of the competent authority. Therefore it is evident that the claimant was not competent to join service with CGHS till 16-9-2000, the date when he was compulsorily retired from service of the Indian Railway. Therefore, it came to light that the claimant could not legally join services with CGHS, when he was in the service of Indian Railway till 16-9-2000.

15. It was brought to my notice by the office that Shri Vijender Singh Tyagi moved L.C.A. Nos. 238/84, LCA No. 167/85, LCA No. 4/87, LCA No. 38/89 and LCA No. 39/89 wherein he claimed himself to be an employee of Indian Railways and sought computation of his benefits under section 33-C(2) of the Act. In L.C.A. No. 238/84 he sought computation of his benefits towards uniform allowance for the years 1979 to 84. His benefits were computed in his favour by this Tribunal vide its order dated 26-11-87. For that purpose Shri Tyagi was examined on oath. He projected that he was an employee of Indian Railway and under suspension from 30-7-80 to 29-3-83. Said application was moved and verified by him on 10-12-84. L.C.A. No. 167/85 was moved and verified by him on 29th of August, 85, wherein he claimed his benefits towards half pay leaves. The said application was granted by the Tribunal on 26-11-87. L.C.A. No. 4/87 was moved and verified by him on 2-1-87 wherein he claimed computation of his benefits towards bonus for the year 1981-1982 and 1982-1983. His claim was granted by this Tribunal vide order dated 7-8-90. L.C.A. No. 38/89 was moved and verified by him on 30th of December, 88 wherein he claimed benefits towards his summer and winter uniform for the year 1983 to 1989. The said application was disposed of on 6-12-90, for want of prosecution. LCA No. 39/89 was moved and verified by him on 30-12-88 wherein he claimed computation of his benefits by way of release of his salary from 3-3-83 to 24-11-85. The application was disposed of on 6-12-90, for want of prosecution. Out of contents of the aforesaid LCAs it came to light that till 1988 Vijender Singh Tyagi has presented a claim that he was an employee of Indian Railways and was posted herein Delhi.

16. No evidence has come forward from the side of the claimant that he took job with the management, after

obtaining permission from his previous employer. His act of joining job with the management was in violation of the rules and public policy. Under these circumstances the claim of the claimant that he was discharging his duty with the management, comes under cloud. Furthermore, when a case was lodged against him and records were seized by the CBI, it proves as an impediment before the management to take steps for fixation of his pay. His right to serve the management would be well adjudicated when facts relating to investigation of criminal case are concluded and brought to the light of the day. Even otherwise compulsory retirement does not wipe out the claim of pensionary benefits, which are to be subtracted out of pay of a re-employed Government servant. Hence absence of service records, including service book of the claimant, would come in the way of the management for taking steps for fixation of his pay.

17. C.B.I. is seized with the investigation of the case. The claimant opted not to inform this Tribunal about the progress of the investigation. He played a game of hide and seek. He dared to abuse the process of law with impunity. It is also surprising that the management had not initiated any domestic action, when it revealed that the claimant obtained job in illegal manner. His demand for fixation of his pay, in accordance with the recommendation of Fourth and Fifth Central Pay Commission, is neither legal nor justified. His claim is rejected. An award is accordingly, passed.

Dated: 22-1-2010

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 2 फरवरी, 2010

का. आ. 590.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 14/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-40012/110/2004-आईआर(डीयू)]

सुरेंद्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S. O. 590.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad, as shown in the Annexure, in

the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 02-02-2010.

[No.L-40012/110/2004-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR-COURT AT HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 2nd day of July, 2009

Industrial Dispute No. 14/2005

BETWEEN

Sri A. Prasad,
C/o P. Appa Rao Reddy,
District Secretary, NUMBSNLW (FNT0),
No. 252, Labour Colony,
Vidyadharapuram,
Vijayawada-12. ...Petitioner

AND

The General Manager,
Bharat Sanchar Nigam Limited,
Vijayawada. ...Respondent

APPEARANCES

For the Petitioner : M/s.C. Vijaya Shekar Reddy &
S.Vijay Venkatesh. Advocates

For the Respondent : Dr. P. Bhaskara Mohan, Advocate

AWARD

The Government of India Ministry of Labour by its order No.L-40012/110/2004-IR(DU) dated 13-1-2005 referred the following dispute under Section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Bharat Sanchar Nigam Ltd., and their workman. The reference is,

SCHEDULE

“ Whether the action of the management of Bharat Sanchar Nigam Ltd., Vijayawada in dismissing services of Sri. A. Prasad, Ex-Casual Mazdoor is justified? If not, to what relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 14/2005 and notices issued to the parties.

2. Petitioner filed claim statement stating that the workman Sri. A. Prasad was initially appointed as casual mazdoor in the Respondent organization on 1-2-1998 at the office of SDE (Extrtnsl), Bhavanipuram, Vijayawada. It is submitted that despite regularizing the workman's services he was illegally terminated from services on 12-11-2003. It is prayed that the Respondent be directed to reinstate the workman with full back wages and all other attendant benefits.

3. Counter was filed by the Respondent stating that the workman Sri. A. Prasad was never appointed at any point of time by the Respondent. It is submitted that the claimant did not file any document in support of his claim, as such the reference be dismissed.

4. Petitioner filed evidence affidavit and Petitioner workman did not present himself for cross-examination. On 2-7-2009, both Petitioner and his counsel called absent while Respondent's counsel is present. The case is being fixed for cross-examination of the workman, but workman is not taking interest to present his witness as such evidence of Petitioner workman is closed. Respondent's counsel does not want to adduce oral evidence in absence of workman's evidence, as such, 'Nil Award' is passed in absence of workman's evidence. Transmit.

Dictated to Smt. P. Phani Gowri, Personal assistant transcribed by her, corrected and pronounced by me on this the 2nd day of July, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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WW1: Sri. A Prasad	NIL
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Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 फरवरी, 2010

का. आ. 591.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबंध में निरदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार के बीच, अनुबंध में निरदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 13/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-2-2010 को प्राप्त हुआ था।

[सं. एल-40012/109 /2004-आईआर(डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S. O. 591.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 13/2005) of the Central Government Industrial Tribunal-cum-Labour Court Hyderabad, as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 27-02-2010.

[No. L-40012/109/2004-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 2nd day of July, 2009

Industrial Dispute No. 13/2005

BETWEEN

Sri G.R.C. Vara Prasad,
Co. P. Appa Rao Reddy,
District Secretary, NUMBSNLW (FNT0),
No. 252, Labour Colony,
Vidyadharapuram,
Vijayawada-12.

...Petitioner

AND

The General Manager,
Bharat Sanchar Nigam Limited,
Vijayawada.

...Respondent

APPEARANCES

For the Petitioner : M/s.C. Vijaya Sekhar Reddy & S.
Vijay Venkatesh, Advocates

For the Respondent : Dr. P. Bhaskara Mohan, Advocate

AWARD

The Government of India Ministry of Labour by its order No.L-40012/109/2004-IR(DU) dated 13-1-2005 referred the following dispute under 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Bharat Sanchar Nigam Ltd., and their workman. The reference is,

SCHEDULE

“ Whether the action of the management of Bharat Sanchar Nigam Ltd., Vijayawada in dismissing services of Sh. G.R.C. Vara Prasad, Ex-Casual Mazdoor is justified? If not, to what relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 13/2005 and notices issued to the parties.

2. Petitioner filed statement stating that the workman Sh. G.R.C. Vara Prasad was initially appointed as casual mazdoor in the Respondent organization on 1-7-1994 at the office of SDE (External) Bhavanipuram, Vijayawada. It is submitted that despite regularizing the workman's services he was illegally terminated from services on 13-11-2003. It is prayed that the Respondent be directed to reinstate the workman with full back wages and all other attendant benefits.

3. Counter was filed by the Respondent stating that the workman Sh. G.R.C. Vara Prasad was never appointed at any point of time by the Respondent. It is submitted that the claimant did not file any document in support of his claim, as such the reference be dismissed.

4. Petitioner filed evidence affidavit and Petitioner workman did not present himself for cross-examination. On 2-7-2009, both Petitioner and his counsel called absent while Respondent's counsel is present. The case is being fixed for cross-examination of the workman, but workman is not taking interest to present his witness as such evidence of Petitioner workman is closed. Respondent's counsel does not want to adduce oral evidence of workman's evidence in absence of workman's evidence, as such, 'Nil Award' is passed in absence of workman's evidence. Transmit.

Dictated to Smt. P. Phani Gowri, Personal assistant transcribed by her, corrected and pronounced by me on this the 2nd day of July, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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WW1: Sh. G.R.C. Vara Prasad	NIL.
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Documents marked for the Petitioner

NIL.

Documents marked for the Respondent

NIL.

नई दिल्ली, 2 फरवरी, 2010

का. आ. 592.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 12/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-40012/108/2004-आईआर(डीयू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S. O. 592.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2005) of the Central Government Industrial Tribunal-cum-Labour Court Hyderabad, as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 02-02-2010.

[No. L-40012/108/2004-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 2nd day of July, 2009

Industrial Dispute No. 13/2005

BETWEEN

Sri P. Appa Rao Reddy,
District Secretary, NUMBSNLW (FNT0),
No. 252, Labour Colony,
Vidyadharapuram,
Vijayawada-12.

...Petitioner

AND

The General Manager,
Bharat Sanchar Nigam Limited,
Vijayawada.

...Respondent

APPEARANCES

For the Petitioner : M/s. C. Vijaya Sekhar Reddy &
S. Vijay Venkatesh., Advocates

For the Respondent : Dr. P. Bhaskara Mohan, Advocate

AWARD

The Government of India Ministry of Labour by its order No. L-40012/108/2004-IR(DU) dated 13-1-2005 referred the following dispute under Section 10(1)(d) of the I. D.

Act, 1947 for adjudication to this Tribunal between the management of Bharat Sanchar Nigam Ltd., and their workman. The reference is,

SCHEDULE

“ Whether the action of the management of Bharat Sanchar Nigam Ltd., Vijayawada in dismissing services of Smt. K. Naga Ratnam, Ex-Casual Mazdoor is justified? If not, to what relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 12/2005 and notices issued to the parties.

2. Petitioner union filed statement stating that the workman Smt. K. Naga Ratnam was initially appointed as casual mazdoor in the Respondent organization on 1-4-1984 at the office of SDE I&E, Bhavanipuram, Vijayawada. It is submitted that despite regularizing the workman's services she was illegally terminated from services on 12-11-2003. It is prayed that the Respondent be directed to reinstate the workman with full back wages and all other attendant benefits.

3. Counter was filed by the Respondent stating that the workman Smt. P. Naga Ratnam was never appointed at any point of time by the Respondent. It is submitted that the claimant did not file any document in support of his claim, as such the reference be dismissed.

4. Petitioner union filed evidence affidavit of Smt. P. Naga Ratnam. Petitioner workman did not present herself for cross-examination. On 2-7-2009, Petitioner and her counsel both called absent while Respondent's counsel is present. The case is being fixed for cross-examination of the workman, but workman is not taking interest to present her witness as such evidence of Petitioner workman is closed. Respondent's counsel does not want to adduce oral evidence of workman's evidence in absence of workman's evidence, as such, 'Nil Award' is passed in absence of workman's evidence. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 2nd day of July, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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WWI: Smt. K. Naga Ratnam	NIL
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Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 फरवरी, 2010

का. आ. 593.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 11/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल.-40012/107/2004-आईआर(डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S. O. 593.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad, as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 02-02-2010.

[No. L-40012/107/2004-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 2nd day of July, 2009

Industrial Dispute No. 11/2005

BETWEEN

Sri P. Appa Rao Reddy,
District Secretary, NUMBSNLW (FNT0),
No. 252, Labour Colony,
Vidyadharapuram,
Vijayawada-12.

...Petitioner

AND

The General Manager,
Bharat Sanchar Nigam Limited,
Vijayawada.

...Respondent

APPEARANCES

For the Petitioner : M/s.C. Vijaya Sheker Reddy &
S. Vijay Venkatesh, Advocates

For the Respondent : Dr. P. Bhaskara Mohan, Advocate

AWARD

The Government of India Ministry of Labour by its order No.L-40012/107/2004-IR(DU) dated 13-1-2005 referred

the following dispute under Section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Bharat Sanchar Nigam Ltd., and their workman. The reference is,

SCHEDULE

“ Whether the action of the management of Bharat Sanchar Nigam Ltd., Vijayawada in dismissing services of Sh. P. Sai Babu, Ex-Casual Mazdoor is justified? If not, to what relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 11/2005 and notice issued to the parties.

2. Petitioner union filed statement stating that the workman Sh. P. Sai Babu was initially appointed as a casual mazdoor in the Respondent organization on 1-5-1994 the office of SDE Extn., Bhavanipuram, Vijayawada. It is submitted that despite regularizing the workman's services he was illegally terminated from services on 12-11-2003. It is prayed that the Respondent be directed to reinstate the workman with full back wages and all other attendant benefits.

3. Counter was filed by the Respondent stating that the workman Sh. P. Sai Babu was never appointed at any point of time by the Respondent. It is submitted that the claimant did not file any document in support of his claim, as such the reference by dismissed.

4. Petitioner union filed evidence affidavit of Sh. P. Sai Babu on 16-11-2006. Petitioner workman did not present himself for cross examination. On 2-7-2009, Petitioner and his counsel both called absent while Respondent's counsel is present. The case is being fixed for cross examination of the workman, but workman is not taking interest to present his witness as such evidence of Petitioner workman is closed. Respondent's counsel does not want to adduce oral evidence of workman's evidence in absence of workman's evidence, as such, 'Nil Award' is passed in absence of workman's evidence. Transmit.

Dictated to Smt. P. Phani Gowari, Personal assistant transcribed by her corrected and pronounced by me on this the 2nd day of July, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner	Witness examined for the Respondent
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WW1: Sh. P. Sai Babu	NIL.
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Documents marked for the Petitioner

NIL.

Documents marked for the Respondent

NIL.

नई दिल्ली, 2 फरवरी, 2010

का. आ. 594.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल सीड्स कारपोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 36/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-42025/2/2010-आईआर(डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S. O. 594.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of National Seeds Corporation Limited, and their workman, which was received by the Central Government on 02-02-2010.

[No. L-42025/2/2010-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD**

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 2nd day of July, 2009

Industrial Dispute L.C. No. 36/2008**BETWEEN**

Sri E. Ramesh,
S/o Komuraiah,
R/o H. No. 5-9-161,
Sikhwada, Kishanpura,
Hanamkonda, Warangal District. ...Petitioner

AND

The Area Manager,
M/s. National Seeds Corporation Ltd.,
(Warangal Unit) at Madikonda,
Hanamkonda, Warangal District. ...Respondent

APPEARANCES

For the Petitioner : M/s. P. V. Satyanarayana & P.
Mallesham, Advocates

For the Respondent : NIL

AWARD

This case was taken in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in 1997

(3) LLJ Supplement, page 1141 in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The petitioner filed this petition against the Respondents questioning the action of the Respondents in terminating him. He submitted that he was engaged as Daily Wage Worker in Respondents's unit at Madikonda, Hanamkonda, Warangal District and he worked as such for 20 years till his oral termination on 21-7-2008. It is submitted that the WP No. 7165/2007 file by the Petitioner was dismissed by the Hon'ble High Court of A.P., Hyderabad. It is submitted that the petitioner is one of the workers who raised dispute over non-payment of weightage wage which is the subject matter of ID No. 125/1994 and E.P. No. 9/08 and also as he raised the writ petition No. 7165/2007, the Respondent resorted to terminate the Petitioner from service. He prays this Court to direct the Respondent to reinstate him with full back wages and with all consequential benefits.

3. As Respondent has not filed counter and documents till 28-4-2009, the case is set exparte against Respondent and Petitioner was called for exparte evidence on 2-7-2009. On 2-7-2009, both parties called absent, as such case is closed in absence of parties and Nil Award is passed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowari, Personal Assistant transcribed by her and corrected by me on this the 2nd day of July, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 फरवरी, 2010

का. आ. 595.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 18/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-40012/114/2004-आईआर(डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S. O. 595.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2005) of the Central Government Industrial Tribunal cum Labour Court Hyderabad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 02-02-2010.

[No. L-40012/114/2004-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AT HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 2nd day of July, 2009

Industrial Dispute No. 18/2005

BETWEEN

Smt. P. Sujatha,
C/o Sri P. Appa Rao Reddy,
District Secretary, NUMBSNLW (FNT0),
No. 252, Labour Colony,
Vidyadharapuram,
Vijayawada-12.

...Petitioner

AND

The General Manager,
Bharat Sanchar Nigam Limited,
Vijayawada.

...Respondent

APPEARANCES

For the Petitioner : M/s.C. Vijaya Sekhar Reddy &
S. Vijay Venkatesh, Advocates

For the Respondent : Dr. P. Bhaskara Mohan, Advocate

AWARD

The Government of India Ministry of Labour by its order No.L-40012/114/2004-IR(DU) dated 13-1-2005 referred the following dispute under Section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Bharat Sanchar Nigam Ltd., and their workman. The reference is,

SCHEDULE

“ Whether the action of the management of Bharat Sanchar Nigam Ltd., Vijayawada in dismissing services of Smt. P. Sujatha, Ex-Casual Mazdoor is justified? If not, to what relief the workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 18/2005 and notices issued to the parties.

2. Petitioner union filed claim statement stating that the workman Smt. P. Sujatha was initially appointed as a casual mazdoor in the Respondent organization on 10-4-1984 at the office of SDE Extn., Bhavanipuram, Vijayawada. It is submitted that despite regularizing the workman's services he was illegally terminated from services on 12-11-2003. It is prayed that the Respondent be directed to reinstate the workman with full back wages and all other attendant benefits.

3. Counter was filed by the Respondent stating that the workman Smt. P. Sujatha was never appointed at any point of time by the Respondent. It is submitted that the claimant did not file any document in support of her claim, as such the reference by dismissed.

4. Petitioner filed evidence affidavit of Smt. P. Sujatha. Petitioner workman did not present himself for cross examination. On 2-7-2009, Petitioner and her counsel both called absent while Respondent's counsel is present. The case is being fixed for cross examination of the workman, but workman is not taking interest to present her witness as such evidence of Petitioner workman is closed. Respondent's counsel does not want to adduce oral evidence in absence of workman's evidence, as such, 'Nil Award' is passed in absence of workman's evidence. Transmit.

Dictated to Smt. P. Phani Gowari, Personal Assistant transcribed by her corrected and pronounced by me on this the 2nd day of July, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner	Witness examined for the Respondent
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WW1: Smt. P. Sujatha	NIL
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Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 फरवरी, 2010

का. आ. 596.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 16/2005) को प्रकाशित करती है, जो केंद्रीय सरकार को 2 2 2010 को प्राप्त हुआ था।

[सं. एल-40012/112/2004 आईआर(डीयू)]

सुरेंद्र सिंह, डेप्युटि अधिकारी

New Delhi, the 2nd February, 2010

S. O. 596.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2005) of the Central Government Industrial Tribunal-cum-Labour Court Hyderabad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workmen, which was received by the Central Government on 02-02-2010.

[No. L-40012/112/2004-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 2nd day of July, 2009

Industrial Dispute No. 16/2005

BETWEEN

Sri D. Venkata Ratnam,
C/o Sri P. Appa Rao Reddy,
District Secretary, NUMBSNLW (FNTO),
No. 252, Labour Colony,
Vidyadharapuram,
Vijayawada-12.

...Petitioner

AND

The General Manager,
Bharat Sanchar Nigam Limited,
Vijayawada.

...Respondent

APPEARANCES

For the Petitioner : M/s.C. Vijaya Sekhar Reddy &
S. Vijaya Venkatesh, Advocates

For the Respondent : Dr. P. Bhaskara Mohan, Advocate

AWARD

The Government of India Ministry of Labour by its Order No.L-40012/112/2004-IR(DU) dated 13-1-2005 referred the following dispute under Section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Bharat Sanchar Nigam Ltd., and their workmen. The reference is,

SCHEDULE

"Whether the action of the management of Bharat Sanchar Nigam Ltd., Vijayawada in dismissing services of Sri D. Venkata Ratnam, Ex-Casual Mazdoor is justified? If not, to what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 16/2005 and notice issued to the parties.

2. Petitioner filed claim statement stating that the workman Sri D. Venkata Ratnam was initially appointed as a casual mazdoor in the Respondent organization on 1-5-1992 at the Office of SDE Extn., Bhavanipuram, Vijayawada. It is submitted that despite regularizing the workman's services he was illegally terminated from services on 12-11-2003. It is prayed that the Respondent be directed to reinstate the workman with full back wages and all other attendant benefits.

3. Counter was filed by the Respondent stating that the workman Sri D. Venkata Ratnam was never appointed at any point of time by the Respondent. It is submitted that the claimant did not file any document in support of his claim, as such the reference be dismissed.

4. Petitioner filed evidence affidavit and Petitioner workman did not present himself for cross examination. On 2-7-2009, both Petitioner and his counsel called absent while Respondent's counsel is present. The case is being fixed for cross examination of the workman, but workman is not taking interest to present his witness as such evidence of Petitioner workman is closed. Respondent's counsel does not want to adduce oral evidence of workman's evidence in absence of workman's evidence, as such, 'Nil Award' is passed in absence of workman's evidence. Transmit.

Dictated to Smt. P. Phani Gowari, Personal Assistant transcribed by her corrected and pronounced by me on this the 2nd day of July, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner	Witness examined for the Respondent
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WW1: Sh. Venkata Ratnam	NIL
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Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 फरवरी, 2010

का. आ. 597.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ़ हैदराबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 110/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-2-2010 को प्राप्त हुआ था।

[सं. एल-12025/2/2010-आईआर(बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S. O. 597.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 110/2005) of the Central Government Industrial Tribunal cum Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Hyderabad and their workmen, which was received by the Central Government on 27-02-2010.

[No. 1-12025/2/2010-IR(B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated the 3rd day of July, 2009

Industrial Dispute L.C. No. 110/2005

BETWEEN

Smt. D. Jangamma,
W/o Late Yellaiah,
R/o Kandukur Village,
Ranga Reddy District,
C/o 1-1-2/3, Jawaharnagar,
R.T.C. 'X' Roads, Hyderabad-20. ...Petitioner

AND

The Branch Manager,
State Bank of Hyderabad,
Kandukur Branch, Ranga Reddy District. ...Respondent

APPEARANCES

For the Petitioner : Sri V. Mallik, Advocate

For the Respondent : Sri Ch. Siva Reddy, Advocate

AWARD

This case was taken in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in 1997 (3) LLJ Supplement, page 1141 in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The petitioner filed this petition against the Respondent questioning her oral termination. It is submitted that Petitioner has been appointed by the Respondent on a monthly pay of Rs. 50 w.e.f. 1-2-1995 and she continued upto 4-8-2000 till her oral termination. That she had issued a legal notice to the Respondent dated 24-6-2005 for her reinstatement. She prays this Court to direct the Respondent to reinstate her as a regular employee with all consequential benefits.

3. As against this, the Respondents filed a counter denying the allegations in the claim statement of the petitioner. It is submitted that the Petitioner was never appointed as sweeper by the respondent w.e.f. 1-2-1995 and never terminated from service on 4-8-2000. It is further submitted that under exigencies bank used to take services of any person specifically for that work and pay for the same out of petty cash and the work of such person starts and ends with that work and they are not engaged in any leave vacancy or notified vacancy or specific period. As such this petition is liable to be dismissed.

4. Parties were directed to produce evidence in support their respective contentions. Petitioner filed her evidence affidavit reiterating the facts mentioned in her petition. She has marked, Ex.W1 office copy of the legal notice dated 24-6-2005, Ex.W2-office copy of her representation dated 23-5-2005, Ex.W3 particulars of her pay, Ex.W4 her representation to the Regional Manager, Ex.W5 is the proposal sent by the Respondent for absorption, Ex.W6 is the proposal for sanction of part time employment to the Petitioner. She was cross examined by the Respondent's counsel.

5. The Respondent bank has filed affidavit of Sri K. Vijaya Babu, Chief Manager, State Bank of Hyderabad, R.P. Road branch as MW1.

6. On 3-7-2009 when case called out, both workman and her counsel are absent. Respondent's counsel present and informed that workman has died and she is not survived by LRs, as such the claim has lapsed. In view of the information given by Respondent and in absence of workman, the case is closed. Accordingly, 'Nil Award' is passed. Transmit.

Dictated to Smt P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 3rd day of July, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Smt D. Jangamma	MW1: Sri K. Vijay Babu

Documents marked for the Petitioner

Ex.W1: Copy of legal notice to Respondent dt.24-6-2005
Ex.W2: Copy of representation dt.23-5-2005
Ex.W3: Particulars of WW1's salary
Ex.W4: Copy of representation to Regional Manager by WW1
Ex.W5: Copy of Proposal sent by Respondent for absorption
Ex.W6: Copy of proposal for sanction of part time employment of Petitioner.

Documents marked for the Respondent

NII.

नई दिल्ली, 2 फरवरी, 2010

AWARD

का. आ. 598.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचात (संदर्भ संख्या 195/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-12025/1/2010-आईआर(बी. 1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S. O. 598.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 195/2004) of the Central Government Industrial Tribunal-cum-Labour Court Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 02-02-2010.

[No. I-12025/1/2010-IR(B-I)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD**

Present : Shri Ved Prakash Gaur, Presiding Officer

Dated, the 26th day of June, 2009

Industrial Dispute L.C.I.D. No. 195 of 2004**BETWEEN**

Smt. S. Rajamma,
W/o Late S. Venkataratnam,

D. No. 3/189-0-20, Vijayanagar Colony,
Gollapalle, Madanapalle,
Chittoor District.

...Petitioner

AND

The Assistant General Manager,
State Bank of India, Zonal Office,
Renigunta Road,
Tirupathi.

...Respondent

APPEARANCES

For the Petitioner : Sri C. Vijaya Sekhar Reddy,
Advocate

For the Respondent : Sri B. Lalitha Kumari, Advocate

This is a case taken under Sec.2 A (2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No.8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. This petition under Section 2A(2) of the ID Act filed by Smt S.Rajamma challenging the action of the management in terminating his services by order dated 31-3-1997 and to declare termination order and as unjust, illegal violating of principle of natural justice and violating of section 2p and 18(1) read with rule 58 of Central Rules and to reinstate the petitioner in the service of the bank with consequential benefits and back wages.

3. It has been averred by the petitioner in his claim statement that he worked as Sweeper from 1987 to 31-3-1997 for a period of 304 days at Madanapalle, Vayalpad branches of State Bank of India. In response to the paper advertisement, the petitioner attended the interview and after successful completion of the interview, he was empanelled for regularization in the year 1989 and was absorbed by the respondent as Sweeper, since then the petitioner worked continuously till 31-3-1997. Surprisingly the services of the petitioner were terminated by oral order dated 31-3-1997 without assigning any reason or without giving any notice or pay in lieu of the notice. The petitioner has further stated that he is erstwhile employee who worked in Madanapalle, Vayalpad Branches of SBI and belongs to BC community. He possesses prescribed educational qualifications as he has passed 9th class and qualification prescribed for Messenger is 7th class pass. It has been stated by the petitioner that the Government of India vide circular No.F-3/3/104/87-IR, dated 16-8-1990 instructed the Chief Executives of all Public Sector Banks including the respondent management that until problem of existing temporary employees is fully resolved, no bank is permitted to make any temporary appointments. It has been, further, submitted by the petitioner that some of the persons similarly situated like that of the petitioner aggrieved by the inaction of the management whose services were not regularised from out of the select panel filed W.P. No. 4194/97 before Hon'ble A.P. High Court seeking direction from the Hon'ble High Court to direct the bank to implement the settlement entered into between temporary bank employees federation and bank management from time to time. The Hon'ble A.P. High Court by an order dated 5-3-1997 directed the bank to implement the settlement as amended from time to time and also directed the bank to carry out the settlement before expiry of March 1997. In view of the directions granted by the Hon'ble High Court, all those candidates whose names appeared in the select panel on the basis of the agreement entered into on 7-11-1987 under which the panel was valid up to December 1991 and on the basis of a settlement dated 27-10-1988 whereby the panel was made

alive up to 31-3-1997 which was given continuity and renewed up to 1999. However, this did not put to an end the legitimate claims of various persons like petitioner's case. The petitioner was further, submitted that a circular was issued on 26-4-1991 wherein it was mentioned that the terms of the agreement dated 17-11-1987 were modified vide agreement dated 16-7-1988 while so, another agreement was entered into on 27-10-1988 between employees union and bank management. In terms of the said agreement, a chance was to be given to all eligible temporary employees for permanent appointments. These appointments were to be made against vacancies likely to arise during the year 1995-1996, to solve the problem of employees and extension of continuity of the panel of eligible temporary employees who has been empanelled or who could not appear in earlier interviews and had been pursuing their cases thereafter, will be given another chance to appear in the interview, thereby exhausting the existing panels. The said agreement, further, stated that the original panels and supplementary panels would be issued for filling of vacancies in the sub-ordinate cadre arising upto 1994 and for the vacancies to be arisen in 1995-1996. Based on the circular dated 26-4-1991, a fresh notification referring to the 3rd settlement dated 27-10-1988 was issued. The last date to respond to the notification was 30-5-1991. Then a separate panel was prepared on 22-2-1993. This panel was to be alive till 31-3-1997. Two separate panels were prepared (a) based on agreement dated 17-11-1997 and (b) based on settlement dated 27-10-1988 which were to remain alive upto 31-3-1997. It has been, further, alleged that though the select panels were intended for a specific period. They were got to be extended, thereby creating a reasonable expectation to the select candidates that their case will be considered and the date of absorption will be extended. But contrary to the direction given by the Hon'ble High Court on 5-3-1997 in WP No. 4194/1997 and contrary to the settlement entered into between the parties. The bank issued proceedings dated 25-3-1997, 27-3-1997 and 31-3-1997 instructing the various authorities of the management not to continue the temporary employees w.e.f. 1-4-1997. The bank management followed the said order. Aggrieved by the said order, the petitioner and similarly situated candidates filed writ petition before Hon'ble A.P. High Court which is registered as WP No.9206 of 1997 to declare the action of the management dated 25-3-1997, 27-3-1997 and 31-3-1997 as illegal and to direct the management to continue the services of the petitioners. The management has filed counter affidavit. The matter is pending before the Hon'ble High Court. The management has abruptly terminated services of the petitioners without giving any notice and without following the mandatory provisions of the ID Act. As such, the action of the management is illegal, arbitrary and injustice. The petitioner be directed to be reinstated in the services with full back wages.

4. The management has filed counter statement. The management has stated that to tide over the severe subordinate staff constraints, which arose out of, leave vacancies, exigencies and also owing to the restrictions imposed by the Government of India/Reserve Bank of India on intake of the staff. The respondent bank used to engage Messengers, Sweepers, Sweeper-cum-Water Boy etc., depending upon the availability of the work on temporary basis for smooth and uninterrupted functioning of the branch. The all India State Bank Staff Federation which represents majority of the employees of the SBI comprising 98% of the work force as its' members espoused the cause of temporary employees who have put in less than 240 days of temporary services in 12 calendar months in the bank and who were ineligible for any kind of protection under the ID Act and requested the bank management to give a chance to such employees for being considered for absorption and permanent appointment in the bank services, discussions were held between the staff federation and bank management and all aspects were discussed in detail and it was felt that it would be just, fair and reasonable that a settlement should be reached. Thus, on 17-11-1987 an agreement was signed between federation of staff and management of the bank wherein temporary employees were categorized into 3 categories (a) those who have completed 240 days of temporary services in 12 calendar months or less after 1-7-1975 (b) those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-1975 or (c) minimum of 70 days aggregate temporary service in any continuous block of 36 calendar year after 1-7-1975 and it was agreed that temporary employees as categorized would be given a chance for being considered for permanent appointment against the vacancies which are likely to arise during the period 1987 to 1991. On 16-7-1988 another agreement was arrived and it was agreed to substitute the period for consideration of vacancies as 1987 to 1992 in place of 1987 to 1991. On 27-10-1988, another agreement was arrived at between the parties in which clause 1-A after clause 1 of the last agreement was inserted wherein it was agreed that all persons who had been engaged in casual basis for any of the periods mentioned in category A,B,C will be given a chance for being considered for permanent appointment against the vacancies likely to arise from 1988 to 1992. Accordingly, casual and daily wage workers were also included for consideration for permanent absorption. The Government of India vide letter dated 16-8-1990 issued guidelines to all the public sector banks with regard to recruitment and absorption of temporary employees in public sector banks. The guidelines made it clear that all the public sector banks may follow the provisions laid down in approach paper. The approach paper is specified that the case of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to benefit of Section 25F of the ID Act may be

decided by entering into an agreement with representative union. In respect of temporary employees who have put in less than 240 days of service in 12 consecutive months or less, a settlement could be avoided and however if the management so desired they could enter into a conciliation settlement with the representative union. In Para 6(h) it was mentioned that only those temporary employees who had put in temporary service of 90 days or more after 1-1-82 would be eligible for consideration under the scheme. The approach paper is also specified that one time one opportunity to all the temporary employees for consideration of absorption to be taken up who has worked in the bank on or after 1-1-1982. The respondent has gone further wherein the persons who were working after 1997 were also considered. Thus, it could be seen that genuine efforts on the part of respondent bank to provide permanent employment for as many as possible persons were undertaken subject to availability of vacancies. On 9-1-1991, another settlement hereinafter referred to as 4th settlement for brevity, was entered into between the Staff Federation and Management wherein the settlement dated 17-11-1987, 16-7-1988 and 27-10-1988 were also considered agreeing inter alia to consider the cases of temporary employees and casual and daily wage workers separately in the vacancies likely to arise upto 1994 and 1995-1996 respectively. Accordingly, the year 1992 was substituted with year 1994 and separate panels were prepared for filling upto the vacancies arising between 1995 and 1996. The Federation approached the Regional Labour Commissioner(C), Hyderabad for implementation of Bipartite Settlements in respect of absorption of temporary employees. The Regional Labour Commissioner(C) conducted conciliation proceedings and an agreement was arrived at between the Federation and the Management Bank that both the panels of temporary-employees and daily wage/casual labour would be kept alive upto March, 1997 and the vacancies as agreed to under the aforesaid settlements will be filled from both the lists concurrently. In response of the conciliation proceedings, the settlement was arrived at and an agreement was signed on 30-7-1996, which is binding on both the parties where under earlier settlements dated 17-11-1987, 16-7-1988, 27-10-1988 and 9-1-1991 were referred and it was agreed between the parties that both the panels of temporary employees and daily wage/casual employees will be kept alive upto March, 1997 for filling the vacancies existing or arising as on 31-12-1994 within the framework of the above settlements. The modalities about drawing names from the out of the panels would be decided administratively on circular to circular basis depending upon the local requirements in consultation with the federation's affiliate by the circle management and further, agreed that all the messengerial vacancies including part-time attendants is specifically provided as leave reserve will be filled by the end of 31-3-1997. The Memorandum of understanding was signed on 27-2-1997 between federation of staff and bank

management that the exercise of identifying the messengerial vacancies as on 31-12-1994 has since been completed by the Central Office and thereby 403 messengerial vacancies were sanctioned to the circle of the management bank and it was agreed that these vacancies may be filled from 1989 panel of temporary employees after effecting conversion from full time non-messengerial staff in the usual manner and the agreement was reached accordingly. It was agreed between the Federation's affiliate and the management bank that in terms of settlement dated 30-7-1996, the panel would lapse on 31-3-1997. The vacancies as agreed upon were filled with the eligible candidates from the panels. The petitioner of this case has not been put in more number of days than those persons who have been absorbed. The petitioner has not continuously worked for the years as alleged by him. He has put in an agreement temporary service of less than 240 days in a continuous 12 months during the period 1-7-1975 to 31-7-1988 had no right to seek a direction to consider his candidature for absorption under any rule/law except under the terms of the settlement entered into between the parties. The candidature of the petitioner has been considered under the settlements dated 17-11-1987, 16-7-1988, 27-10-1988, 9-1-1991 and 30-7-1996 and having considered under the provision of the said settlements. The petitioner was not found fit to be considered for absorption. The bank management has not violated any terms of the settlement, since the panel prepared by the bank. The petitioners names were not found fit for absorption upto 31-3-1997, their engagement was discontinued from 1-4-1997 and bank management has not committed any violation of the rules and petitioners are not entitled for any relief

5. The parties were directed to file their evidence. The petitioner has filed Ex.W1 to Ex.W5 the service certificates given by the respondent bank. Ex.W6 the interview call letter Ex. W7 the list of selection panel. Ex. W8 the Caste certificate. The petitioner has filed his affidavit in respect of his oral evidence and has presented himself for cross examination. The bank has filed documents. Ex.M1 the copy of the settlement dated 17-11-1987. Ex. M2 the copy of the settlement dated 16-7-1988. Ex. M3 the copy of the settlement dated 27-10-1988. Ex. M4 the copy of the settlement dated 9-1-1991. Ex. M5 the copy of the Minutes of conciliation proceedings dated 9-6-1995. Ex. M6 the copy of the settlement dated 30-7-1996. Ex. M7 the MoU dated 27-2-1997. Ex. M8 and Ex. M9 are the copy of the statements giving particulars of 89 Messengers Panel and copy of the statement of 1989 non-Messengerial panel and Ex. M10 the copy of the statement of 1992 panel. Ex. M11 the copy of the judgement of the Hon'ble High Court in W.A.No.86/98 dated 1-5-1998 and Ex. M12 the copy of the judgement in SLP No.11866 to 11888 of 1998 dated 10-8-1998.

6. The management has also filed affidavit of IS. Apparao and presented him for cross examination, but the

petitioner or his counsel did not appear to cross examine the respondent witness, as such, the cross examination was closed and the matter has been taken for judgement.

7. I have gone through the claim statement, counter statement and the documentary & oral evidence presented by the parties. The contention of the petitioners in all the cases are that they were employed in the bank on November 1987, and as per the terms of the settlements entered into between the bank staff federation and the bank management from time to time, the petitioners were entitled for the absorption since their name was found place in the panel prepared by the bank administration. It is agreed between the parties that the settlements were entered into between the bank staff federation on 17-11-1987, 16-7-1988, 27-10-1988 and 9-1-1991 and finally on 30-7-1996 and MoU was also entered into between the staff federation and bank management on 27-2-1997 by which the panels life was to end on 31-3-1997. In light of this admitted fact, it has to be seen whether the case of the petitioner is covered under any of the provisions of the settlement entered into between the parties. As per settlement dated 17-11-1987, three categories of the temporary employees were prepared. Category (a) all those employees who completed 240 days in 12 calendar months after 1-7-1975. Category (b) all those employees who completed 270 days aggregate in any continuous block of 36 calendar months after 1-7-1975. Category (c) all those who completed 30 days aggregate temporary service in a calendar year after 1-7-1975 or 70 days in aggregate in any continuous block of 36 calendar months. In the light of these categories of the temporary employees, the status of the petitioner has to be considered. The petitioner in his statement, has admitted that he was appointed without any written orders during the year 1987. He worked for 304 days during the period from 1987 to 31-3-1997 and no written or oral order was issued to him. Thus, from the own statement of the petitioner, it is proved that the petitioner Smt S.Rajamma has worked for 304 days during the period from 1987 to 16-2-1996. *It means that his case is not covered under category (a) & (b) of the, (Agreement dated 17-11-1987. His case is covered within the category (c).* The petitioner Smt S.Rajamma has stated in his cross examination that he is not a member of the employee federation and the settlement is not applicable & binding in his case. However, in his claim statement, he has stated that an agreement was entered into between the bank management and the staff federation of the bank and he is entitled for the benefit of the agreement. *Since his case is not covered under the provisions of category (a) or (b) of the settlement dated 17-4-1987, and he has not challenged that junior to him in the service or the person who has completed less than the number of days of service than the petitioner have been absorbed by the bank management, the petitioner's case is not covered by any of the terms of the settlements dated 17-11-1987, July 1987,*

October 1988, 9-1-1991 and 30-7-1996 or MoU dated February 1996. The bank has categorically stated that it has followed the terms of agreement and settlements and MoU and it has absorbed the candidates empanelled from the temporary and casual and daily wage workers for absorption in the permanent cadre. The petitioner's name has not been found for consideration due to the non fulfillment of the conditions and not putting in the number of days of the service as required by the agreement or the persons absorbed in service have put in more number of days of the service than the petitioners. As such, the petitioner's case has not been considered since the panel was remain to alive upto 31-3-1997, till the date. The petitioners' name could not come for consideration for absorption. The panel has lost his force on 31-3-1997 and the services of the petitioners were disengaged in the light of the circular issued by the bank and from 1-4-1997. The bank has not committed any illegality, or irregularity or high handedness in disengaging the services of the petitioners. It is proved that the petitioners have not put in required number of days of the service and consequently the petitioners name was much below those candidates who have been considered for absorption and as per settlements entered into between the bank staff federation and bank management. The panel prepared by the bank management has lost utility on 31-3-1997, and the bank has committed no illegality and the petitioner is not entitled for any relief and the petition deserves to be dismissed. This is the award of this Tribunal. The petition is dismissed with cost.

Dictated to Sri. P. Kanaka Raju, I.DC transcribed by him and corrected by me on this the 26th day of June, 2009.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner	Witness examined for the Respondent
S..Rajamma	I.S.Appa Rao

Documents marked for the Petitioner

- Ex.W1 to Ex.W5 the service certificates given by the respondent bank.
- Ex.W6 the interview call letter.
- Ex. W7 the list of selection panel.
- Ex. W8 the Caste certificate

Documents marked for the Respondent

- Ex.M 1 the copy of the settlement dated 17-11-1987.
- Ex. M2 the copy of the settlement dated 16-7-1988.
- Ex. M3 the copy of the settlement dated 27-10-1988.
- Ex. M4 the copy of the settlement dated 9-1-1991.

Ex. M5 the copy of the Minutes of conciliation proceedings dated 9-6-1995.

Ex. M6 the copy of the settlement dated 30-7-1996.

Ex. M7 the MoU dated 27-2-1997.

Ex. M8 and Ex. M9 are the copy of the statements giving particulars of 89 Messengers Panel and copy of the statement of 1989 non-Messengerial panel and

Ex. M10 the copy of the statement of 1992 panel.

Ex. M11 the copy of the judgement of the Hon'ble High Court in W.A.No.86/98 dated 1-5-1998 and

Ex. M12 the copy of the judgement in SLP No. 11866 to 11888 of 1998 dated 10-8-1998.

नई दिल्ली, 2 फरवरी, 2010

का. आ. 599.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण-II, हैदराबाद के पंचाट (संदर्भ संख्या) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-40012/27/1996-आईआर (डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S. O. 599.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-II, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 02-02-2010.

[No. L-40012/27/1996-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-II, HYDERABAD

Present : Ms. J. Uma Devi, B. Com, M. L., Chairman

On this the 7th day of April, 2009

Industrial Dispute No. 23/1998 (Central)

BETWEEN

Sri K. Kishan,
C/o K. Gopal Phone Mechanic,
H. No. 8-6-139, C/o G. Rangaiah,
Padmavati Colony,

Mahaboobnagar-509 001.

...Petitioner

AND

The Sub-Divisional Officer,

Tele communications,

Mahaboobnagar-509 001.

...Respondent

APPEARANCES

1. Sri Y. Ranjeet Reddy, Counsel for the Petitioner
2. Sri R. S. Murthy, Counsel for the Respondent

AWARD

The High Court of A.P. after deciding the Writ Petition bearing No. 5923/1999 filed by the Sub-Divisional Officer, Telecommunication (the respondent in ID.23/1998) remanded the present case for fresh disposal vide its order dated 3rd July 2008. Immediately after receipt of the order from the High Court of A.P. on 18-9-2008, this court issued notices to both the parties on taking/reopening the case to file with the same number.

The petitioner's counsel submitted written arguments on 19-12-2008 and thereafter the counsel of the respondent filed the additional counter alongwith the petition in IA. 12/09 and the same was taken to file. The additional counter which was filed by the respondent subsequent to the remand of the case was nothing but a copy of the written arguments submitted by him in the main case.

The petitioner herein was appointed as casual mazdoor on 1-4-1983 and worked up to 31-3-1984 and thereafter w.e.f. 1-8-1984 his services were terminated and after termination he gave a representation to the Assistant Commissioner of Labour (Central) to settle the dispute but the dispute was not settled. Basing on the failure report sent by the Assistant Commissioner of Labour (Central) the Central Government vide its Proceedings No. L-400 12/27/96-IR(DU) dtd. 23-2-1998 referred the dispute for adjudication on framing the following issue :

“Whether the action of Sub-Divisional Officer, Telecom, Mahaboobnagar is justified in terminating the services of Sri.K. Kishan, Ex-casual mazdoor w.e.f. 1-8-1984 is legal and justified? If not, to what relief he is entitled?”

It seems that the reference was made to this tribunal, the petitioner approached Central Administrative Tribunal by way of filing O.A.644/1996 seeking a declaration that he is entitled for reengagement as a casual mazdoor under the control of the Telecom District Engineer, Mahaboobnagar in terms of the various instructions issued by the Director General, Telecom and also as per the Letter No. T A/LC/1-2/111 dated 21-10-91 and Lr.No.T A/RE/20-2/Rigs/Corr., dated 22-2-93 issued by the Chief General Manager, Telecom, Hyderabad by holding the action of

the respondent in not re-engaging him is illegal, arbitrary, discriminatory and violation of Articles 14 and 16 of the Constitution of India. When such a declaration was sought the Central Administrative Tribunal having found that the petitioner acquired some experience because of his working in the department, gave a direction to the respondent to re-engage his services as a casual mazdoor in future. If there was any work in the same unit from where he was last disengaged in preference to freshers from the open market and if he was going to be re-engaged, none who was already in casual service should be removed. After his case was decided by the Central Administration Tribunal, he raised the Industrial dispute by making a representation to the Assistant Commissioner of Labour (Central) and thereafter the Central Government of India vide its Proceedings dated 23-2-1998 referred the dispute for adjudication. After remand of the case no fresh evidence was brought on record. The parties relied on the evidence available before the court and no fresh evidence was brought on record after remand of the case. The petitioner got himself examined as WW-1 and on behalf of the respondent Sri N.V. Prasad Rao was examined as MW1. The petitioner exhibited Exs.W1 to W7 documents. Among the documents filed by him, Ex.W1 was the Xerox copy of notice of retrenchment given to Sri.T.Ranga Rao, dtd. 15-04-1997, Ex. W2 was the day book, Ex. W3 was the xerox copy of the list of re-engagement of casual labour dated 11-4-1997, Ex. W4 was Xerox copy of the representation letter given by the petitioner to the Assistant Commissioner of Labour (Central) Hyderabad, dated 3-2-1995, Ex. W5 was the Xerox copy of the judgment of Central Administration Tribunal dated 13-6-1996, Ex.W6 was the X.C. of notice issued by the respondent dated 14-8-1996, Ex. W7 was the Xerox copy of the list of re-engagement of casual mazdoor dated 14-2-1994. My predecessor at the time of passing the award dated 25-9-1998 had gone through the evidence of the petitioner and the evidence of the respondent and observed that the petitioner worked for more than 240 days in a calendar and his services were terminated without notice and without payment of notice pay or compensation and therefore termination of his services by the respondent was contrary to the provisions of Section 25-F of Industrial Disputes Act.

When the award of this court dated 25-9-1998 was challenged by the respondent before the High Court of A.P., the High Court of A.P., remanded the case to this court with a direction to adjudicate the dispute strictly in accordance with the terms of the reference.

The High Court of A.P., after elaborate discussion on the contentions raised by the respondent in para 11 and 12 of its order made the following observations :

(Para. 11) With regards the contentions that the services rendered in a calendar year must alone be taken into consideration, such a contention deserves outright

rejection such it is contrary to the express provisions of the Explanation to 25-B of the Industrial Disputes Act, whereunder service rendered for a period of 240 days in the 12 months period preceding the relevant date is reckoned as continuous service for a period of one year.

(Para. 12) There is, however, substantial force in the contention of Sri R.S.Murthy, learned counsel for the petitioner that the Tribunal had exceeded the scope of the reference. What was referred for adjudication by the Tribunal was whether the action of the petitioner in terminating the services of the 1st respondent with effect from 1-8-1984 was justified or not. If 01-08-1984 is held to be the date of termination then in accordance with the explanation to Section 25-B of the Industrial Disputes Act, the 12 month period of serviced has to be reckoned backwards and the Tribunal ought to have ascertained whether the 1st respondent had worked for a period of 240 days in the 12 month period from 1-8-1983 to 31-7-1984. The Tribunal, however, held that the 1st respondent had worked for more than 240 days during the 12 months period from 1-4-1983 to 31-3-1984 and has failed to examine whether he had worked for 240 days in the 12 month period from 1-8-1983 to 31-7-1984. The question whether the 1st respondent-workman had worked for 240 days during the 12 month period from 1-4-1983 to 31-3-1984 was beyond the scope of the reference and was not a matter which the Tribunal could have made the basis of its order. The Tribunal has clearly exceeded its jurisdiction and has travelled beyond the scope of the reference. The award of the Tribunal must be set aside on this short ground.

The High Court of A.P. on making such observations had set aside the award of this Tribunal and remanded the case for fresh disposal. The High Court of A.P. also had observed that the question of delay is one of the factors to be taken into consideration by the Tribunal in molding the relief, if any, granted to the workman. Taking into consideration of the delay on the part of the workman in approaching it, or in raising a dispute the tribunal can either deny the relief to the workman or mould the relief accordingly. Since, the Tribunal has not examined the question of delay I see no reasons to do so, in certiorari proceedings under Art 226 of the Constitution of India. On making above said observations remanded the case with a direction to adjudicate the dispute referred to it strictly in accordance with the terms of the reference.

The petitioner's contention is that he worked for more than 240 days and therefore, he is entitled for reinstatement. According to him, he attended for the work on below mentioned days as per the day book maintained by him:

In the month of July 1984	31 days
In the month of June 1984	30 days
In the month of May 1984	31 days

In the month of April 1984	30 days
In the month of March 1984	29 days
In the month of February 1984	29 days
In the month of January 1984	31 days
In the month of December 1983	31 days
In the month of November 1983	30 days
In the month of October 1983	-NIL-
In the month of September 1983	-NIL-
In the month of August 1983	4 days

Total days worked	328

The day book Ex. W2 is counter signed by the concerned officials. The petitioner contends that after termination of his services some other casual mazdoor were appointed and the list showing the engagement of casual labour is exhibited by him as Ex. W3 which is dated 11-4-1997. The petitioner has filed an application in I.A.91/98 calling for the records from the respondent but no record is produced by the respondent even after a direction from the court. The petitioner's contention is that he worked continuously as a casual mazdoor from 1-4-1983 to 31-7-1984 and to prove his working under the respondent as a casual mazdoor he filed the day book Ex. W2 and to prove that some mazdoors were appointed after termination of his services he filed the Xerox copy of the list of casual labour engaged by the respondent.

Petitioner's counsel vehemently argued that the services of the petitioner are terminated illegally on 1-8-1984 without notice, without payment of retrenchment compensation and therefore, the order of termination dated 1-8-1984 passed by the respondent is liable to be set aside and a direction is required to be given to the respondent to reinstate the petitioner into service with continuity of service and all other attendant benefits.

The counsel of the respondent says that the award of this court dated 25-9-1998 is set aside by the High Court of A.P., by virtue of the order dated 03-07-2008 in W.P.No.5923/99. The High Court while setting aside the award of this court has directed this court to adjudicate the dispute referred strictly in accordance with the terms of the reference. According to him it is the duty of the petitioner to produce the letters of engagement and payment particulars and the record showing the places of work but it is not for the respondent to produce such type of record. The respondent is unable to produce the records like muster rolls etc., as they cannot be retained for more than 5 years. Since the petitioner has made the claim for reinstatement after lapse of 24 years without production of necessary record, it can be held that he made the claim

for reinstatement without any basis and he deserves no relief and the petition filed by him is liable to be dismissed.

The petitioner in his written arguments stated that as per the day book maintained by him (which he exhibited before the court as Ex. W2) he worked for more than 240 days in a calendar year and the said day book was Counter signed by the concerned officials. The witness examined by the respondent stated that the petitioner joined in their department on 1-4-1983 as a casual mazdoor and worked upto 31-7-1984 but with break in service. Since no other material was placed by the respondent to disprove deny the contents of day book produced by the petitioner the court relied on the entries made thereunder and the admissions made by MW1. As per EX. W4 the petitioner worked:

In the month of July 1984	31 days
In the month of June 1984	30 days
In the month of May 1984	31 days
In the month of April 1984	30 days
In the month of March 1984	29 days
In the month of February 1984	29 days
In the month of January 1984	31 days
In the month of December 1983	31 days
In the month of November 1983	30 days
In the month of August 1983	4 days
In the month of July 1983	22 days
In the month of June 1983	30 days
In the month of May 1983	31 days
In the month of April 1983	30 days

But not worked for a single day in the months of September and October, 1993.

The respondent in his counter at para 4 has contended that every mazdoor who works in the department has to maintain day book with all relevant information such as Work order number, muster roll number, nature of work, signature of the Mustering Officer, signature of the concerned Sub Divisional Officer Telecom etc., In this case the petitioner is put to strict proof of the same by producing the day's book from which the number of days he worked can be calculated. The day book which is necessary for calculation of number of days he worked is produced by the petitioner and the entries play vital role to come to a conclusion. From the entries available in Ex. W2 it can be understood that the petitioner worked with break of service and supporting the version of MW 1 who stated that the petitioner worked as a casual mazdoor from 1-4-1983 to 31-7-1984 with break of service. The Xerox

copy of the representation letter submitted by the petitioner to the Asst. Commissioner of Labour (Central), Hyderabad (Ex.W4) discloses that he worked in Tele Communication Department, Mahaboobnagar from 1-4-1983 to 1-9-1983 and attended cable and line maintenance work under Sri Hussain, from 1-11-1983 to 31-5-1984 worked under Venkataswamy again from 1-6-84 to 31-7-84 under Sri Hussain and was relieved from service from 1-8-1984 and could not go to work as he was not doing well and therefore he was removed from service. The record available before the court shows that the petitioner worked only up to 31-7-1984 from 1-4-1983. In the letter addressed to the Asst. Commissioner of Labour (Central) Hyderabad he himself stated that he could not go for the work as he was not doing well. The respondent has contended that the petitioner himself left the department voluntarily and neither an appointment letter nor an order of termination was given to him. The petitioner approached the Asst. Commissioner of Labour on 3-2-1995 till then he did not make any effort to approach the respondent or any other authority for the employment. After failure of the effort made by him to settle the dispute in an amicable way before the conciliation officer, he approached the Central Administrative Tribunal by filing the O.A.644 of 1996 for the relief of re-engagement and the Central Administrative Tribunal gave a direction to re-engage his services as a casual mazdoor basing on the availability of the work in the same unit where from he was last disengaged in preference to the freshers. After such judgment was given by the Central Administrative Tribunal, he approached the department of Tele Communication with a claim for reinstatement through his letter dated 7-8-1996. The department of the Tele Communication Mahaboobnagar gave the reply stating that no additional work to engage the freshers as casual mazdoor is available and no proposal for recruitment of fresh casual mazdoor is made and therefore there is no possibility to re-engage his services. However, he was informed that his case would be considered at the time of engagement of fresh casual mazdoors and was directed to keep in touch with the department.

On perusal of Ex.W4 letter it is understood that the petitioner voluntarily stopped attending the work and his services were not terminated orally by the respondent as contended by him. Therefore, question of violating the provisions Under Sec.25-F of Industrial Disputes Act by the respondent does not arise. The nature or work for which the services of the petitioner were engaged was temporary and that the Sub-Inspectors were asked to get them completed within a specified period with specified number of workers and it was the reason for not providing work to the petitioner in the months of September, 1983 and October, 1983.

The petitioner contended that his services were terminated in violation of the provisions of Sec.25-F and

25-B of I.D. Act. This court in the earlier paras observed that the petitioner stopped attending to the work because of illness and his services were not terminated illegally in violation of the provisions of Sec. 25 F as contended by him. He approached the Asst. Commissioner of Labour only in the month of February 1995 till such time he had not approached the respondent for re-engaging his services as a casual labour or mazdoor nor challenged that his services were terminated illegally. He also had not substantiated the version that the respondent had engaged the services of the juniors after termination of his services. The divisional engineer in his letter (Ex.W3) had only asked to verify whether the persons mentioned in the list were still working and whether they happened to be recruited after 22-6-1988.

The judgment of Central Administrative Tribunal remained unchallenged and whatever direction given to the respondent was not made effective. Though this court held that the petitioner failed to establish that the provisions of Sec.25-F were violated, the petitioner could claim the relief for reinstatement though not with continuity of service and backwages as the judgement of the Central Administrative Tribunal had not been made effective by the respondent who had not challenged the order of the tribunal before any of the Higher Court.

When the counsel of the respondent contended before the Hon'ble High Court that the petitioner approached the court with delay of fourteen years and for the said delay there was no explanation from him etc., the High Court stated that the delay by itself would not prevent the petitioner from raising the industrial dispute and that itself would not prevent the tribunal from entertaining the dispute referred to it for adjudication, but the delay could be taken into consideration by the tribunal, while granting the relief. The tribunal taking into consideration of the delay on the part of the workman in approaching it, or in raising dispute, to either deny the relief to the workman or mould the relief.

In the present case, the petitioner worked in the department of the respondent from 1-4-1983 to 31-7-1984 as per the day book maintained by him. He approached the Asst. Commissioner of Labour for the first time in the month of February, 1995 by addressing a letter dated 3-2-1995 vide Ex.W4 and till then he had not approached the respondent for re-engagement of his services and in the said letter dated: 3-2-1995 he stated that he could not attend the work because of ill-health etc., but before the matter was referred for adjudication and an order was passed by Central Administrative Tribunal on 13-6-1996 and thereafter he approached the Department of Telecommunication for the relief of reinstatement by making a representation dated 7-8-1996 and even then his request was not considered.

The Government basing on the failure report of the Asst. Commissioner of Labour referred the dispute for

adjudication. The respondent challenged the award of this court dated 25-9-1998 before the High Court of A.P. and later after disposal of the Writ Petition filed by the respondent herein the case was remanded back to this court. It was contended during the time arguments of the respondent that no relief could be granted to the petitioner as he made the claim for re-instatement after delay of fourteen years without production of letters of re-engagement and payment particulars etc., the period during which the case were pending before the courts the petitioner could not be made responsible for the delay. The petitioner no doubt approached the conciliation officer ten years after disengagement of his service under the respondent and for such delay he could not be found fault, but for the delay which occurred subsequent thereto he could not be held responsible. The undisputed fact was that the order of Central Administrative Tribunal was not made effective. In the order of Central Administrative Tribunal dated 13-6-1996 the respondent was directed to re-engage the services of the petitioner in preference to freshers from the open market in the unit where from his services was disengaged. The Xerox copy of the list of casual labour filed by the petitioner dated 11-4-1997 was neither disputed nor denied. According to Ex. W3 the respondent re-engaged eight casual mazdoors in Mahaboobnagar Division and allotted those mazdoors to SDOT, Gadwal for the purpose of carrying on cable digging works. Prior to the said order of the District Engineer Mahaboobnagar a representation was made by the petitioner to the Sub-Divisional Officer of Mahaboobnagar and he was directed to keep in touch with him. The respondent despite of the order from the Central Administrative Tribunal not considered the request of the petitioner to re-engage his services. The respondent contended that due to introduction of modern technology, privatization in Telecommunication Department manpower was reduced to a greater extent. In the years 1985 & 1988 a decision was taken to stop fresh recruitment of casual labours for any type of work. The respondent in support of the said contention though filed some documents and not examined any witness to speak about the same. The Tele Communication District Engineer through his order dated 14-2-1994 ordered for employment of Casual Mazdoors for the purpose of cable digging works in SDOT, Gadwal. The said order was made subsequent to the instructions given to the Tele Communication Department which were dated 30-3-1985 and from the reading of this order it could be understood that after a decision was given to limit or minimize the number of engaging casual labours and to stop fresh employment of casual labour etc., depending upon the need of the department employment of casual mazdoor was done. When such was the situation, the case of the petitioner would have been considered by the respondent in the light of the direction given to it by the Central Administrative Tribunal dt. 13-06-1996, but it was not

done and this made the court to find fault with the respondent and hold that the delay could not a reason to deny the relief to the petitioner.

Having been found that the petitioner served the Department of Tele Communication as a casual mazdoor for more than 240 days, the court is of the opinion that it is a fit case where a direction can be given to re-engage the services of the petitioner by providing a suitable employment to him.

In addition to the payment of compensation of Rs.10,000 to him, because of my findings in earlier para where it is stated that the respondent failed to follow the order of Central Administrative Tribunal dated 13-06-1996 even after a representation for employment is made by the petitioner.

With this observation, award is passed in favour of the petitioner with a direction to the respondent to re-engage the services of the petitioner as a daily wager and to pay compensation of Rs.10,000 within one month from the date of publication of the award.

Dictated to the stenographer, transcribed by him, corrected by me and pronounced in the open court on this the 7th day of April, 2009.

Ms. J. UMA DEVI, Chairman

APPENDIX OF EVIDENCE WITNESSES EXAMINED

For Workman/ Petitioner:	For Management/ Respondent
WW1 - K.Kishan.	MW1 - N.V.Prasada Rao.

DOCUMENTS MARKED

For Workman/ Petitioner:	
Ex. W1: 15-04-1997	: X.C. of notice of retrenchment of Sri T.Ranga Rao
Ex.W2: —	: Day Book.
Ex.W3: 11-04-1997	: X.C. of list of engagement of casual labour
Ex.W4: 03-02-1995	: X.C. of representation letter from petitioner addressed to ALC (Central), Hyd.,
Ex.W5: 13-06-1996	: X.C. of judgement passed by Central Administrative Tribunal.
Ex.W6: 14-08-1996	: X.C. of notice issued by respondent.
Ex.W7: 14-02-1994	: X.C. of list of re-engagement of Casual Mazdoor.

Respondent/Management: -Nil-

नई दिल्ली, 2 फरवरी, 2010

का. आ. 600.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण 11, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-40012/28/96-आईआर(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S. O. 600.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-II, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 02-02-2010.

[No. L-40012/28/96-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE THE INDUSTRIAL TRIBUNAL-II,
HYDERABAD**

**Present : Ms. J. Uma Devi, B. Com, M.L.,
Chairman**

On this the 7th Day of April, 2009,

I.D. No. 22/1998

(CENTRAL)

BETWEEN

Sri. K. Venkataramana,
S/o, K. Ellaiah, H. No. 1-7-157/3A,
Hanumannagar,
Mahaboobnagar-509 001

... Petitioner.

AND

The Sub-Divisional Officer,
Telecommunications,
Mahaboobnagar-509 001

... Respondent.

APPEARANCES

1. Sri. Y. Ranjith Reddy, Counsel for the Petitioner.
2. Sri. R. S. Murthy, Counsel for the Respondent.

AWARD

When the respondent herein approached the High Court of A.P. aggrieved by the award of this Industrial Tribunal in I.D. 22/98 dated 25-9-1998, the High Court remanded the case back to this court by setting aside the award of this court and directed this tribunal to examine the contentions raised by the respondent regarding the delay in raising the Industrial Dispute and whether the period of service from February 1982 to 12-12-1982 should

be taken into consideration to ascertain whether the workman had worked for 240 days and, whether or not the enquiry held in this regard was beyond the scope of reference or a matter incidental thereto.

The High Court while giving such direction directed this Tribunal to afford opportunity of hearing to both the parties and pass the award afresh.

The petitioner contended that he joined as a casual labour in the office of the respondent herein on 1-2-1982 and worked continuously till 1-4-1983 i.e. till the date when his services were terminated orally and that the said oral order of termination passed against him by the respondent was illegal and against to the mandatory provisions of Sec.25-F of the Industrial Disputes Act. By the date of termination of his services he had put in continuous services for 320 days in a year from 1-2-1982 to 1-4-1983. The respondent had neither given one month notice nor paid one month wages or the compensation and continued several other juniors in service.

The respondent contended that no written order was given to the petitioner at the time of his joining into service as a casual mazdoor. Therefore question of issuing termination order would not arise. It is false to say that the petitioner worked for 320 days from 1-2-1982 to 1-4-1983. He worked only for 120 days that too with frequent breaks from 8-2-1982 to 12-12-1982. The department was granting seniority to the casual mazdoor depending upon the physical working days put in by each individual worker, and that the date of joining was immaterial. The petitioner was gainfully employed somewhere also in these 15 years. The respondent had drastically reduced its manpower due to introduction of modern technology and privatization of telecommunication works. In these circumstances, engagement of additional casual labour would become unnecessary burden to the department. The petitioner made the claim for employment after a gap of 15 years, therefore, he has no right to make a claim for employment.

In the additional counter the respondent pleaded that this tribunal in the award dated 25-09-1998 mentioned that the petitioner worked as casual labour from 01-02-1982 to 01-04-1983 and he rendered services as casual labour in Gadwal and Mahaboobnagar sub divisions without their being indication of the specific periods in the said divisions, though these divisions are separate establishments and the period is to be reckoned separately for the purpose of computation of statutory period of 240 days. The High Court remanded the matter with a specific direction to this tribunal to 'examine the contentions raised regarding the delay in raising the dispute and to decide whether the period from February 1982 to 12-12-1982 should be taken into consideration to ascertain whether the petitioner had worked for 240 days and whether or not such an enquiry would be beyond the scope of the reference or a matter incidental thereto'. In the day book filed by the petitioner the details of

engagement of his services including the places and works were not mentioned. The petitioner had not filed the letters of engagement and payment particulars which were necessary and essential to prove his working in the department. Even the day book was not supplied by the department for maintenance by the petitioner with signatures of J.T.O and same would become irrelevant, since the Sub-Divisional Officer was competent authority to attest the said book regarding the working of the petitioner in the department during the particular period. The provisions of Sec.25-F had not been violated. The evidence placed by the petitioner and the day book filed by him were not relevant as the day book was not signed by the competent authority. It was only the self-serving evidence placed by him to prove that he completed the service for more than 240 days. He approached the court for the relief of reinstatement with delay of 15 years without production of letters of engagement and payment particulars. Hence the claim made by him is baseless, misconceived and he deserves no relief from the department and therefore, the claim made by him is liable to be dismissed.

The counsel of the petitioner contends that this Tribunal after receipt of the reference numbered the case as I.D.22/98 and issued notices to both the parties. This court after elaborate enquiry has passed the award in favour of the petitioner on 25-9-1998 and has directed the respondent to reinstate the petitioner into service with continuity of service. When a Writ Petition is filed by the respondent herein vide W.P.No.5961/99 challenging the award of this Court dated 25-9-1998 the Hon'ble High Court of A.P. has set aside the award of this Tribunal and remanded the matter with a direction to adjudicate the dispute strictly in accordance with the terms of reference. The petitioner herein has worked for more than 240 days in a calendar year and the details of his working in the department of the respondent as per the day book EX.W2 are as follows :

In the month of February, 1982	26 days
In the month of March, 1982	27 days
In the month of April, 1982	26 days
In the month of May, 1982	27 days
In the month of June, 1982	20 days
In the month of July, 1982	27 days
In the month of August, 1982	15 days
In the month of September, 1982	30 days
In the month of October, 1982	25 days
In the month of November, 1982	24 days
In the month of December, 1982	12 days
In the month of January, 1983	05 days
In the month of February, 1983	06 days

In the month of March, 1983

20 days

He says that in the day book, Ex. W2, the days on which he stated to have worked are recorded and it is counter signed by the concerned officials. The respondent after termination of services of the petitioner has appointed some other casual mazdoors and the petitioner has filed the list of engagement of casual workers (Ex.W3). Though a petition is filed by the petitioner in I.A.89/98 calling for the records from the respondent and the original of the letter of Ex.W3, the respondent has not produced the same in spite of a direction from this tribunal to produce the same. The respondent has terminated the services of the petitioner illegally in an arbitrary way without following the principles of natural justice. The respondent has failed to follow the provisions of Secs. 25-F, Sec.G, Sec.H and Sec.N of the Industrial Disputes Act, 1947. If the number of days are calculated from the date of termination to preceding 12 months as per the reference and as per the order of the High Court of A.P. it is clear the petitioner had put in service for 290 days in the department of the respondent.

The Hon'ble Supreme Court of India in a case-law reported in LLR 2008, 1214 has held that "even a part time worker who is covered under the definition of Sec. 2 (s) of the Industrial Disputes Act, is entitled to the benefits of continuous service U/s.25-B and the benefits of Sec. 25-F of the Industrial Disputes Act under the Industrial dispute there is no time limit for raising the Industrial Dispute" and that this Tribunal on elaborate enquiry has passed the award on 25-9-1998 and the same is to be upheld. He further contends that in a case where a workman filed a case 11 years after termination of his services, this Tribunal directed the respondent to reinstate him into service with full back wages and when Writ Petition was filed against the order of this court in W.P. 18000/86, the High Court modified the order of this Tribunal and granted back wages from the date of filing the petition but not from the date of termination. The case of the petitioner also stands on same footing and therefore same type of relief may be granted to him.

After hearing the arguments of both the parties the court is now required to examine the contentions raised by them with regard to the delay in raising the dispute and "Whether the period of service of the workman from February 1982 to 12-12-1982 is to be taken into consideration to ascertain whether the petitioner worked for 240 days"

The Government of India in the reference dated 23-2-1998 has asked this court to give its finding on the following issue :

"Whether the action of the Sub-Divisional Officer Telecom, Mahaboobnagar in terminating the services of Sri. K. Venkataramana, Ex-casual Mazdoor w.e.f. 2-4-1983 is legal and justified."

“If not, to what relief he is entitled?”

When the respondent counsel contended before the High Court of A.P. That this Tribunal had exceeded its jurisdiction as it decided the question which was not even referred to it and stated that in the order of reference, the Tribunal was asked to examine “Whether the action of the Sub-Divisional Officer Telecom, Mahaboobnagar in terminating the services of the workman w.e.f. 2-4-1983 was legal and justified. The enquiry which was expected to be done was, “whether the petitioner worked for 240 days within a period of 12 months preceding the date of his termination i.e., from 3-4-1982 to 2-4-1983, the Hon’ble High Court in page 20 of its order made the following observation “that the services of the petitioner were engaged from February 1982 to 12-12-1982 as per Ex. W2. If 12 months period was to be calculated from 13-12-1982 the petitioner worked for 259 days and if 12 months period had to be reckoned from 13-12-1982, the petitioner would get the protection U/s 25-F having completed 240 days of service in the preceding 12 months as stipulated U/s 25-B of the Act. But the question “whether reckoning of the period of 12 months backwards from 12-12-1982 is beyond the scope of the reference or is incidental to the reference is the question which should be examined first by the tribunal before this court is called upon to examine such contention in certiorari and proceedings”.

Thus it is clear that the High Court was of the opinion that whether reconing of the period of 12 months backwards from 12-12-1982 was beyond the scope of the reference or a matter incidental to the reference was the question which the tribunal had to decide. The High Court was also of the opinion that the workman was entitled to invoke the jurisdiction of labour court directly, without seeking a reference U/s.10, against the order of termination. The Hon’ble High Court on coming to such a conclusion directed this court to examine the contentions raised both sides regarding the delay in raising the dispute and to examine whether the period from February 1982 to 12-12-1982 should be taken into consideration to ascertain whether the workman had worked for 240 days and whether or not such an enquiry was beyond the scope of the reference or a matter incidental thereto. In the present case, this court was asked to give its finding on these issues.

The workman’s contention in the present case is that, he joined as a casual Mazdoor in the Department of Telecommunication on 1-2-1982 and worked continuously till 1-4-1983 and thereafter his services were terminated by orally on 1-4-1983. When he is examined before the court he has stated that he was appointed as casual labour on 1-2-1982 and worked up to 1-4-1983 continuously in Mahaboobnagar and Gadwal Sub-Divisions.

The Government of India in the reference dated 23-2-1998 asked the court to examine.

“Whether the Sub-Divisional Officer, Telecommunication, Mahaboobnagar is justified in terminating the services of Venkataramana (the petitioner herein) w.e.f. 2-4-1983.”

The petitioner nowhere stated in his deposition or in his claim statement that he worked in the Department of Telecommunication, Mahaboobnagar till 13-12-1982. In the day book (which is exhibited by him as Ex. W2) it was mentioned that he worked up to 1st April, 1983. The witness of the respondent (MW1) stated that the petitioner worked with break of service up to 12-12-1982 without producing of any record. In the counter of the respondent also it was stated that the petitioner worked up to 12-12-1982, but the respondent had not filed any record to prove that the petitioner worked upto 12-12-1982. The respondent only basing on the evidence of MW1 and the version mentioned in the counter contented that the period of 12 months is to be reckoned backwards from 12-12-1982 without production of any material to the effect that the petitioner worked only up to 12-12-1982. The version of the petitioner stating that he worked in the Department of Telecommunications up to 1-4-1983, was supported by the entries made in Ex.W2 day book which he was asked to maintain by the department. The day book produced by him before the court as Ex. W2 shows that he worked in the department of Telecommunication upto the month 1st April, 1983. Basing on such a contention raised by him in the representation sent to the Sub-Divisional Officer, Telecommunication, Mahaboobnagar and Xerox copy of conciliation proceedings (which are marked as Ex.W1 and W5), the Government of India through its reference dated 23-2-1998 asked this court to examine the issue “Whether the action of Sub-Divisional Officer, Telecommunication, Mahaboobnagar in terminating the services of Sri. K. Venkata Ramana, Ex-casual Mazdoor w.e.f. 2-4-1983 is legal and justified?”

“If not, to what relief the petitioner is entitled?”

The day book exhibited by the petitioner contains signatures of the Sub Inspector under whose control he is asked to attend the work upto the end of December 1982, if the same taken into consideration it is clear that he worked for 259 days from 1-2-1982 to 31-12-1982.

The respondent contends that the petitioner only worked up to 13-12-1982 and thereafter he stopped attending the work, but as per the day book maintained by the petitioner, he attended for the work in the month of January 1983, February 1983 and March 1983 also. In the representation sent to the respondent for reengagement of his services as casual mazdoor he stated that he worked up to 1-4-1983 and even before the Conciliation Officer he made the same version and basing on such version the Government of India asked this court to examine the issue “Whether the respondent is justified in terminating the services of the petitioner w.e.f. 2-4-1983”. Basing on the

contention raised by the respondent stating that the period of 12 months is to be reckoned backwards from 13-12-1982 for which there is no proof, this court cannot examine such a contention raised by him and if it is done, it is going beyond the scope of the reference. Simply because the respondent has taken stand that the petitioner worked only up to 12-12-1982, without any proof, this court cannot go beyond the scope of the reference where under this court is asked to adjudicate the issue, "whether the respondent is justified in terminating the services of the petitioner w.e.f. 2-4-1983?"

In a case of similar nature filed 'by the workman by name K. Kishan against Sub-Divisional Officer, Telecommunication in I.D. 23/98, this court passed the award dated 25-9-1998 in favour of the workman, when the respondents challenged the said award before the Hon'ble High Court of A.P. in W.P. No. 5923/99, the Hon'ble Court in paras 11 & 12 of its order made the following observations :

(para-11): With regard to the contention that the services rendered in a calendar year must alone be taken into consideration, such a contention deserves outright rejection since it is contrary to the express provisions of the explanation to Section 25-B of the Industrial Disputes Act, whereunder service rendered for 240 days in the 12 months period preceding the relevant date is to be reckoned as continuous service for a period of one year.

(para-12): There is forever, substantial force in the contention of R. S. Murthy learned counsel for the petitioner that the Tribunal had exceeded the scope of the reference. What was referred for adjudication by the Tribunal was 'whether the action of the petitioner in terminating the service of 1st respondent w.e.f. 1-8-1984 was justified or not. If 1-8-1984 is held to be the date of termination, then in accordance with the explanation to Sec. 25-B of the Industrial Disputes Act, the 12 months period of service has to be reckoned backwards and the tribunal ought to have ascertained that whether the 1st respondent had worked for a period of 240 days in the 12 months period from 1-8-1983 to 31-7-1984. The tribunal, however, held that the 1st respondent had worked for more than 240 days in the 12 months period from 1-4-1983 to 31-3-1984 and has filed to examine whether he had worked for 240 days in 12 months period from 1-8-1983 to 31-7-1984. The question whether the 1st respondent - workman had worked for 240 days during the 12 months period from 1-4-1983 to 31-3-1984 was beyond the scope of the reference, and was not a matter which the Tribunal could have made the basis for its order. The Tribunal has clearly exceeded this jurisdiction and has travelled beyond the scope of the reference. The award of the Tribunal must be set aside on this short ground. In the above case the Hon'ble High Court agreed with the arguments of the respondent and held that this tribunal exceeded its jurisdiction by going beyond the scope of the reference

"and gave a direction to adjudicate the dispute referred strictly in accordance with the terms of the reference."

In the present case the Government of India asked this tribunal to adjudicate the issue:- "whether the action of Sub-Divisional Officer, Telecommunication, Mahaboobnagar in terminating the services of Sri K. Venkata Ramana ex-casual mazdoor w.e.f. 02-04-1983 is legal and justified". The version of the workman of the present case is that he worked upto April, 1983 and thereafter his service was terminated orally. It is only the respondent who made the contention that the petitioner not attended the work after 12-12-1982 without substantial piece of evidence, since such contention is raised by them without any basis or any supporting material the same cannot be taken into consideration and it is done, it is nothing but going beyond the scope of the reference.

The petitioner in his claim statement as well as in his evidence has stated that he worked in the department of Telecommunication upto 1-4-1983 and thereafter his service were terminated orally. In the representation submitted by him to the respondent (Ex. W1) he stated that he worked in the department of Telecommunication upto 1-4-1983. Since 2-4-1983 is the date of termination as per explanation to Sec. 25-B of the Industrial Disputes Act, the period of 12 months services is to be reckoned backwards from 2-4-1983 to ascertain whether the petitioner worked for 240 days in 12 months period from 1-4-1982 to 1-4-1983 but not from 8-2-1982 to 12-12-1982 as contended by the respondent since such version is made by them without any supporting document or any other material evidence.

It is evident from EX.W2 that the services of the petitioner were engaged from February 1982 to 1st April, 1983. To disprove the contents of Ex. W2, day book, evidence of any kind is not placed before the court by the respondent. If the entries in day book are taken into consideration it is clear that the petitioner worked more than 240 days in 12 months period from 1-4-1982 to 1-4-1983.

So far as the question of delay is concerned, the petitioner for the first time approached the Sub-Divisional Officer of Telecommunication, Mahaboobnagar with his representation dated 29-12-1997 i.e., nearly 14 years after termination of his services and till such time, he neither sent any representation nor made any request for reinstatement. He approached the Conciliation Officer (Assistant Commissioner of Labour-I, Hyderabad) on 30-3-1995 and thereupon conciliation meetings were held but the dispute was not settled. Therefore, failure report was sent by the Asst. Commissioner (Labour-I), Hyderabad to the Government. On his report the Central Government referred the dispute for adjudication to this Tribunal. The petitioner neither approached the concerned authorities nor the labour department immediately after termination of his service for necessary relief. He sent a representation

to the labour department on 30-3-1995 and till such time no effort made by him to get the dispute settled and thus caused delay of 12 years in raising the dispute and for such delay he alone could be made responsible. In the representation given by him to the Sub-Divisional Officer, Telecommunication dated 29-12-1997 (Ex. W1) he contended that he was not given work after 1-4-1985 though work was available. His version was that his services were terminated though juniors of him were continued. The petitioner admitted that no appointment letter was given to him at the time when work was entrusted to him. Though he claimed that the persons shown in Ex. W3 dated 22-8-1986 were juniors to him, we were not furnished with necessary material to know when the petitioner was taken into service etc., and when his juniors were taken into service etc. Therefore by going through Ex. W3 one could find it difficult to conclude that the persons shown in Ex. W3 were the juniors to the petitioner. In these circumstances the court thought that it is appropriate to direct the respondent to maintain register of casual or daily labour so that the workman can claim seniority over his juniors.

It is established by the petitioner that he worked for more than 240 days in 12 months during period from 1-4-1982 to 1-4-1983. Since it is established by the petitioner that he worked for 240 days he is entitled for protection U/s 25-F of Industrial Disputes Act. Therefore the court feels that it is appropriate to direct the respondent to engage the service of the petitioner as daily wage basis.

The undisputed fact is that the petitioner raised the dispute in the year 1995 before the Conciliation Officer and thereafter the case is referred for adjudication by the Central Government in the month of February 1998 and later the case is taken to High Court and is remanded to this court in the month of August, 2008. In these 20 years, petitioner may have incurred the some considerable amounts to participate in the proceeding and may have faced the difficulties to secure such amount and this has made the court to direct the respondent to pay Rs. 10,000 as compensation to the petitioner apart from re-engaging his services as a fresh daily wage.

With this observation award is passed in favour of the petitioner with a direction to the respondent to re-engage his services on daily wage basis and to pay compensation of Rs. 10,000 to him within one month from the date of publication of the award.

Dictated to the stenographer, transcribed by him, corrected by me and pronounced in the open court on this the 7th day of April, 2009.

Ms. J. UMA DEVI, Chairman.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Workman/ Petitioner:	For Management/ Respondent:
WW 1 - K. Venkataramana.	MWI - N.V. Prasada Rao.

DOCUMENTS MARKED

For Workman/Petitioner:

EX.W1: 29-12-1997	: X.C. of representation letter from petitioner addressed to respondent.
EX.W2:	: Day Book.
Ex. W3: 22-08-1986	: X.C. of list of employees statement.
Ex.W4.: 30-03-1995	: X.C. of letter from petitioner addressed to respondent.
EX.W5 :	20-09-1995 X.C. of minutes of conciliation proceedings.

For Respondent/Management: -Nil

नई दिल्ली, 2 फरवरी, 2010

का. आ. 601.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्कूटर्स इण्डिया लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 2/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-42011/46/2008-आईआर(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S. O. 601.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Scooters India Ltd., and their workman, which was received by the Central Government on 02-02-2010.

[No. L-42011/46/2008-IR(DU)]

SURENDAR SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Present : N. K. Purohit, Presiding Officer

I.D. No.02/2009

Ref. No. L-42011/46/2008-IR(DU), dated :
16-02-2009

BETWEEN

The General Secretary,
Scooters India Mazdoor Action Sangathan,
Sarojini Nagar,
Lucknow.

AND

The Manager (HR)
Scooters India Limited
Sarojini Nagar
Lucknow.

AWARD

Dated : 21-1-2010

1. By order No. L-42011/46/2008-IR(DU) dated : 16-02-2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the General Secretary, Scooters India Mazdoor Action Sangathan, Sarojini Nagar, Lucknow and the Manager (HR), Scooter India Limited, Sarojini Nagar, Lucknow for adjudication.

2. The reference under adjudication is :

“Whether the action of the Management of the Manager (HR), Scooters India Ltd., Lucknow, in making recovery of amount of Rs. 300, paid to their workmen per month during their service, from the dues payable to them at the time of superannuation, is legal and justified? If not to what relief the workmen are entitled to?”

3. It is admitted case of the parties that after negotiation between workmen's union and the management of Scooters India Limited, the management agreed to pay a sum of Rs. 300 per month to the workmen as recoverable advance, subject to the approval of Board of Directors. It was also agreed upon that after approval of the Board of Directors the payment of Rs. 300 paid to the workman, shall be treated as ad-hoc payment adjustable against accruals of wage revision for five years from 01-01-2002 to 31-12-2006.

4. It has been submitted by the workmen's union that after approval of Board of Directors the proposal for wage revision was sent to the Ministry for obtaining their approval and meanwhile continued to pay ad-hoc payment of Rs. 300 per month, adjustable against arrears of wage revision. It has further been submitted by the workmen's union that statutory deductions are also being made as per provisions of Income Tax Act as applicable after adding said ad-hoc payment of Rs. 300. It has been alleged by the workmen's union that the total amount paid against said ad-hoc payment is being deducted, in one instalment, from retiral benefits, under heading 'Recoverable Advance', which is contrary to the principles of natural justice. Accordingly, the workmen's union has prayed that the recovery of the amount of Rs. 300 paid to the workmen per month during their service, from the dues payable to them at the time of superannuation, be declared illegal, improper and unjustified and the same may be stopped; and the recovered amount be returned to the workmen concerned.

5. The management of the Scooters India Limited in their written statement has submitted that the Board of Directors has approved the ad-hoc payment of Rs. 300 per month against the Wage Revision and has also approved wage revision in this regard and the same was sent for approval to the Ministry but the proposal of revision of wages has not yet been approved from the Ministry. It has further been submitted by the management that the ad-hoc payment made to the workmen is to be adjusted against the accruals of wage revision or is to be recovered from their retiral dues, since the matter of wage revision is still pending with the Ministry, the management is compelled to recover the same from the retiral dues of the workmen retiring before the implementation of wage revision since the same is still not in existence. The management has further submitted that in view of the pending decision on wage revision at the end of Ministry the action of the management is legal, proper and just and does not violate principles of natural justice or any of the law of the land; and accordingly, has prayed that the claim of the workmen's union be rejected without any relief to them.

6. The workmen's union has filed rejoinder whereby it has only reiterated his averments in the statement of claim and has not introduced any new fact.

7. The management filed documents in support of their case whereas the workmen's union filed none. The parties were given opportunity to adduce evidence in support of their respective claim; but the declined for the same; and, accordingly, date was fixed for arguments. Both the parties made their oral submissions to substantiate their respective stand.

8. Heard learned representatives of the both the parties and perused all relevant material on record.

9. The learned representative on behalf of the union has submitted that in meeting of Wage Revision Committee dated 09-08-2004, it was resolved that a sum of Rs. 300 will be paid to every workman w.e.f. August, 2004, subject to approval of the Board of Directors of the Company. Subsequently, the Board of Directors approved aforesaid proposal in the meeting held on 30-10-2006; wherein, it was resolved that wage revision may be done after approval of Ministry till then ad-hoc payment of Rs. 300 paid to each workman shall continue to be paid. Therefore, action of the management in making recovery of the said amount from the retiral benefits is illegal and unjustified. The statutory deductions are also being made as per provisions of Income Tax Act after adding the aforesaid amount in the salary.

10. Per contra, the learned representative on behalf of the company management has contended that as per proceedings of wage revision conciliation committee an amount of Rs. 300 per workman per month was payable, subject to approval of the Board of Directors. The approval

of the Board of Directors required as recoverable advance and after approval of the Board of Directors the amount should be treated as ad-hoc payment and to be adjusted against accruals of wage revision. In this regard proposal was also sent to the Ministry, but the proposal has not yet been approved, therefore, there is no option except to recover the amount as ad-hoc payment to the workmen leaving or retiring from the services of the Company before the implementation of wage revision otherwise it would not be possible for the Company to recover the same from such workmen unless wage revision is approved from the Ministry, this ad-hoc amount cannot be given to persons retiring or workmen leaving the Company.

11. I have given my considerable thought to the rival submissions of the both sides.

12. Admittedly, in meeting of Wage Revision Conciliation Committee dated 09-08-2004, it was resolved that w.e.f. August, 2004 over and above from monthly salary/wages under the package deal a sum of Rs. 300 per month would be paid to every workman and till the approval of Board of Directors the aforesaid amount would be treated as recoverable advance and after approval, the aforesaid amount would be treated as ad-hoc payment. Further, the ad-hoc payment could be adjusted from benefit of wage revision for period of 5 years from 01-01-2002 to 31-12-2006. It is also not disputed that in Board's meeting held on 30-10-2006, wage revision arrived at after settlement was approved for submission to the Ministry for their concurrence. It was further resolved that implementation of proposed revision may be done after obtaining approval of the Ministry. However, till the final approval of the Ministry is received ad-hoc payment of Rs. 300 per month being paid to each workman shall continue to be paid and shall be adjusted against arrears of wage revision. Thus, it is evident from the Board's meeting resolution that the amount was to be adjusted against the arrears of wage revision only. It is not disputed that matter of revision of wage is still pending for concurrence of the Ministry. But as per Wage Revision Conciliation Committee meeting resolution it was not resolved that in case of concurrence is not given by the concerned Ministry the ad-hoc amount will be recovered from the retiral benefits. The amount was to be treated as recoverable advance only till approval of the Board, after approval of the Board the amount paid as such can only be adjusted against arrears of wage revision as per resolution of Board's meeting dated 30-10-2006.

13. In view of the above discussions, the action of the management of Scooter India Limited, Lucknow in making recovery of the amount of Rs. 300 paid to their workmen per month during their service time as ad-hoc payment, till revision of wages, from the dues payable to them at the time of superannuation, being against the resolution of Board meeting dated 30-10-2006, is arbitrary and unjustified. The amount paid as such can only be adjusted against arrears of wage revision. Thus, the

workmen are entitled to get refund of such amount which has been recovered from the dues payable to them at the time of their superannuation after two months from the date of publication of the award.

14. The reference under adjudication is answered accordingly.

15. Award as above.

Lucknow,

21-01-2010

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 2 फरवरी, 2010

का. आ. 602.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. पी. डब्ल्यू. डी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-1, नई दिल्ली के पंचाट (संदर्भ संख्या 32/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-42011/20/2009-आईआर(डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S. O. 602.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2009) of the Central Government Industrial Tribunal-cum- Labour Court No. I, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of C.P.W.D. and their workman, which was received by the Central Government on 02-02-2010.

[No. I-42011/20/2009-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. I, KARKARDOOMA COURT COMPLEX, DELHI

I. D. No. 32/2009

Shri Ranjit Singh, Wireman,

Through All India Central PWD (MRM)

Karamchhari Sangathan (Regd.),

House No. 4823, Gali No. 13, Balbir Nagar Extension, Shahdara, Delhi-110032.

---Workman

VERSUS

The Executive Engineer,
Electrical Division No. 4,
CPWD, I. P. Bhavan,
New Delhi.

....Management

AWARD

Demand of financial upgradation under Assured Career Progression Scheme as well as in situ promotion for Ranjit Singh, Wireman was raised by All India, CPWD (MRM) Karamchari Sangathan on 6th of February, 2008. The said demand was contested by the management. Since no settlement could be arrived at, the Conciliation Officer submitted the failure report before the appropriate Government. The dispute was referred by the appropriate Government to this Tribunal for adjudication, *vide* order No. L-42011/20/2009-IR (DU), New Delhi, dated 25-6-2009, with the following terms :—

“Whether the demand of the All India CPWD (MRM) Karamchari Sangathan for grant of in situ promotion to Shri Ranjit Singh w.e.f. 1-11-98 in the pay scale of Rs. 4000-6000 and for grant of financial upgradation under ACP Scheme in the pay scale of Rs. 4500-7000 is legal and justified? If yes, to what relief the workman is entitled to?”

2. Claim statement was filed by Ranjit Singh pleading therein that he was appointed as Assistant Wireman by the management on 17-11-66. He superannuated from his services on 31st of August, 2003. On implementation of arbitration award 1988, assistant categories were merged with the main category and consequent thereto he became wireman. He was fixed in the pay scale of Rs. 3050-4590. He reached maxima of the said scale on 1st of October, 1996. He was granted in situ promotion in the scale of Rs. 4000-6000 w.e.f. 1st of October, 99. As per arbitration award he was eligible for grant of selection grade w.e.f. 1-1-1981 in the scale of Rs. 330-480, which was revised to Rs. 1200-1800 and subsequently revised to Rs. 4000-6000. He also became eligible for grant of ACP w.e.f. 9th of September, 99 in the pay scale of Rs. 4500-7000, which benefit was not accorded to him. According to him, after grant of in situ promotion, he was being paid in the scale of Rs. 4000-6000, which was a scale for the post of electrician. From the post of electrician he was eligible for promotion to the post of foreman, for which post no trade test or competency certificate is needed. It was claimed that selection grade in the scale of Rs. 330-480, which has been revised to Rs. 1200-1800 and further revised to Rs. 4000-6000 may be granted, on completion of 8 years of service after implementation of arbitration award, financial upgradation under ACP Scheme w.e.f. 9-8-99 in the scale of Rs. 4500-7000 may also be granted, besides revision of his promotional benefits.

3. Claim was demurred by the management pleading that the claimant was appointed as assistant wireman w.e.f. 17-11-86. It has not been disputed that he reached at the maxima of the basic pay of Rs. 4590 in the scale of Rs. 3050-4590 on 1-1-97. In situ promotion was given to him in the scale of Rs. 4000-6000 w.e.f. 1-1-99, date when implementation of ACP scheme took place. It has been denied that he was eligible for grant of selection grade

w.e.f. 1st of January, 1981. It has further been pleaded that for promotion to the post of electrician, the claimant was required to pass trade test and possess electrical supervisory certificate of competency. Neither he passed the trade test nor possess the required competency certificate. As per ACP Scheme, an employee has to be fully eligible in all other aspects viz., educational qualifications, departmental examination, skill/trade test and bench mark etc. to hold a higher post in terms of recruitment rules, the scale of which is to be granted under ACP Scheme. The management referred the matter to Department of Personnel and Training for relaxation of requirement of trade test, educational qualification and supervisory certificate etc., for grant of financial upgradation to wireman under ACP Scheme. The said proposal was turned down. Under these circumstances claimant is not entitled to relief of selection grade or financial upgradation under ACP Scheme. His claim may be dismissed.

4. Shri Satish Kumar Sharma, authorised representative of the workman, presented that the dispute hinges for grant of financial upgradation under ACP scheme which can be adjudicated on the basis of the scheme and certificate/letters written by the management. He was of the view that no evidence was to be led in the matter. He closed the evidence on behalf of the workman. Sh. Atul Rathi, authorised representative of the management, also opted not to adduce any evidence in the matter. Therefore, no evidence was put forward by either of the parties.

5. Arguments were heard at the bar. Shri Satish Kumar Sharma, authorised representative, advanced arguments on behalf of the workman. Sh. Atul Rathi, authorised representative, raised his submissions on behalf of the management. Written submissions were also filed by the parties. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

6. Espousal letter dated 6-2-2008 has been placed over the record by the workman. As per contents of the said letter two demands were raised by All India CPWD (MRM) Karamchari Sangathan, which are extracted thus :—

a. Whether the workman is entitled to be granted the benefits of higher pay scale under in situ promotion scheme in the pay scale of Rs. 4000-6000 w.e.f. 1-11-98?

b. Whether the workman is entitled to be granted higher pay scale of Rs. 4500-7000 as 2nd financial upgradation under ACP scheme?

7. Dispute was raised by the union before the Conciliation Officer, raising the aforesaid two demands before the management. When management contested the

claim put forward by the union, no settlement could arrive at. Consequently on receipt of failure report, the appropriate Government referred the dispute for adjudication wherein demand of the union for grant of in situ promotion as well as for grant of financial upgradation under ACP scheme was referred for adjudication. Therefore, it is evident that neither at the time of espousal nor before the Conciliation Officer a case was projected that the claimant was entitled for grant of selection grade after 8 years of service on implementation of arbitration award 1988. The appropriate Government had also not referred the dispute for adjudication on that matter. Consequently issue relating to eligibility of the claimant for grant of selection grade in pursuance of arbitration award 1988 has not been referred for adjudication. Therefore, it emerges over the record that claim of the workman that he is entitled for grant of selection grade w.e.f. 1-1-81 pursuance of arbitration award 1988 is an after-thought. The said claim cannot be adjudged herein, since it is beyond pale of the reference.

8. Office order No. 10(In situ)/E-2/EDIV/1468 dated 20-6-08 highlights that in situ promotion was granted to Shri Ranjit Singh S/o late Sh. Gyan Singh, Wireman (retired) in the scale of Rs. 4000-6000 w.e.f. 1-1-99, the date when ACP Scheme came into operation. The said office order has been relied by the workman and admitted by the management. Even in its written statement, management concedes that in situ promotion has been granted to the workman from the aforesaid date. Therefore, question raised in the first limb of the reference stands answered. When in situ promotion to Ranjit Singh in the scale of Rs. 4000-6000 was granted by the management, w.e.f. 1-1-99, it is made clear that now there is no dispute on that issue. Consequently, it is made clear that issue relating to the granting of in situ promotion stands satisfied.

9. Thrust of contention of Shri Sharma has been that Ranjit Singh is entitled for financial upgradation under ACP scheme w.e.f. 9th of August, 99. He presents that since Ranjit Singh was getting his wages in the scale of Rs. 4000-6000, on getting in situ promotion, which implies that he was promoted to the post of an electrician. According to him no trade test and competency certificate was needed for promotion to the post of Wireman (electrical). I am afraid that contention advanced by the workman has any weight. It is the case of the workman that he was granted in situ promotion on 1-1-99, when he reached maxima of basic pay of Rs. 4590 on 1-1-97 in the scale of Rs. 3050-4590. In situ promotion in the scale of Rs. 4000-6000 was in the form of financial upgradation. While getting his pay in the scale of Rs. 4000-6000, workman remained a wireman. He never acquired the position of an electrician. For grant of in situ promotion neither educational qualification nor skill/trade test nor bench mark etc. are to be taken into account. Supervisory competency certificate is also not to be possessed for that purpose. In situ promotion is

financial upgradation and nowhere enhances the status of an employee in the hierarchy. Therefore, on getting in situ promotion claimant Ranjit Singh was not promoted to the post of electrician. For next financial upgradation under ACP scheme, the claimant has to satisfy the standards for promotion to the post of an electrician. For that purpose he was required to pass trade test and possess supervisory certificate of competency. It is an admitted case that neither the claimant passed any trade test nor possess electrical supervisory certificate of competency.

10. Circular No. 8/1/99-ECX, New Delhi dated 25-5-2001 highlight that ACP scheme is to be implemented directly keeping in view the provisions of DoPT's office memorandum dated 9-8-99. Clarificatory communication dated 10-2-86 annexed to the said circular spells that workers earlier working in assistant category were placed in main category en bloc on 7-5-97 and for purpose of grant of financial upgradation under ACP scheme, that date would be benchmark.

11. Circular No. 8/1/2007-NR/ECX, New Delhi dated 15-5-2009 lays emphasis that for financial upgradation under ACP scheme in the next higher grade, one has to pass trade test and possess educational qualification and supervisory competency certificate, prescribed under the recruitment rules. The management had placed OM No. 135034/1/97-Estt. (d), New Delhi, dated 9-8-99 over the record on the strength of which financial upgradation under ACP scheme was implemented. Two financial upgradations can be granted to an employee on completion of 12 years and 24 years of regular service, subject to his eligibility to the next position, the scale of which is to be granted to an employee for want of actual promotion. For financial upgradation under ACP scheme an employee has to fulfil the required educational qualification and to pass trade test and possess competency certificate, if so required under the recruitment rules. It has also been clarified that existing time bound promotion schemes, including in situ promotion schemes may continue to be operational for the concerned categories of employees. However, the scheme shall not run concurrently with the ACP scheme. The Administrative Ministry/Department shall have option in the matter to choose between the two schemes i.e. existing time bound promotion scheme or the ACP scheme for various categories of employees. However, and in case of switch over from the existing time bound promotion scheme to the ACP scheme, all stipulation viz. redistribution of post, upgradation involving higher functional duties made under the former scheme would cease to operate. The ACP scheme shall have to be adopted in its totality.

12. As is evident, for financial upgradation under ACP scheme an employee has to pass trade test and possess educational qualification and competency certificate required for the post of electrician. He has to

render 12 years regular service for financial upgradation under ACP scheme. It is an admitted fact that the claimant was not fulfilling the criteria of passing trade test and possessing electrical supervisory competency certificate. Consequently he is not eligible for promotion to the post of electrician. As detailed above, the claimant was granted in situ promotion on 1-1-99. Therefore, from that date he has to show that he had rendered 12 years of service without any promotion, to claim next financial upgradation under ACP scheme. Since he stands superannuated on 31-8-2003, he had not rendered required service for claiming next financial upgradation under ACP scheme.

13. As provided in office memorandum dated 9th of August, 99, scheme for in situ promotion and financial upgradation under ACP scheme, cannot run concurrently. An employee shall either claim in situ promotion or financial upgradation under ACP scheme. In situ promotion was granted to the claimant on 1-1-99. Therefore, he cannot avail the benefit of financial upgradation under ACP simultaneously. For claiming financial upgradation under ACP scheme, he has to forego in situ promotion. After availing benefit of in situ promotion he cannot claim financial upgradation under ACP scheme. Therefore, his claim is liable to be rejected on that score too.

14. In view of the foregoing discussion it is evident that the demand of All India CPWD (MRM) Karamchari Sangathan for grant of financial upgradation to Ranjit Singh under ACP scheme, in the scale of Rs. 4500-7000 is neither legal nor justified. The union harbours under a misconception that on getting in situ promotion Ranjit Singh was promoted to the post of electrician and from that post he can be promoted to the post of foreman (electrical) without undergoing trade test and possessing competency certificate. Another misconception was developed by the union that Ranjit Singh can avail benefits under the scheme of in situ promotion as well as financial upgradation under ACP scheme. Misconception of the union stands wiped out with the adjudication referred above. No relief is to be granted to Ranjit Singh. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated 21-1-2010

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 2 फरवरी, 2010

का. आ. 603.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. पी. डब्ल्यू. डी. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-1, नई दिल्ली के पंचाट (संदर्भ संख्या 31/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-42011/19/2009-आई.आर.(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 2nd February, 2010

S.O. 603.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 31/2009) of the Central Government Industrial Tribunal cum Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of C.P.W.D. and their workman, which was received by the Central Government on 02-02-2010.

[No. L-42011/19/2009-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL No. 1, KARKARDOOMA COURT
COMPLEX, DELHI**

I. D. No. 31/2009

Shri Rajinder Singh,
Through All India CPWD(MRM) Karamchari Sangathan,
House No. 4825, Gali No. 13,
Balbir Nagar Extension, Shahdara,
New Delhi.

---Workman

Versus

The Executive Engineer,
Electrical Division No. 18, CPWD, I. P. Bhavan,
New Delhi.

...Management

AWARD

Demand of financial upgradation under Assured Career Progression Scheme as well as in situ promotion for Rajinder Singh, Wireman, was raised by All India, CPWD(MRM) Karamchari Sangathan on 6th of February, 2008. The said demand was contested by the management. Since no settlement could be arrived at, the Conciliation Officer submitted the failure report before the appropriate Government. The dispute was referred by the appropriate Government to this Tribunal for adjudication, vide order No. L-42011/19/2009-IR(DU), New Delhi, dated 25-6-2009, with the following terms :

“Whether the demand of the All India CPWD(MRM) Karamchari Sangathan for grant of in situ promotion to Shri Rajinder Singh w.e.f. 1-1-98 in the pay scale of Rs.4000-6000 and for grant of financial upgradation under ACP Scheme in the pay scale of Rs. 4500-7000 is legal and justified? If yes, what relief the workman is entitled to?”

2. Claim statement was filed by Rajinder Singh pleading therein that he was appointed as Assistant Wireman by the management on 30th of day October, 72. He superannuated from his services on 31st of May, 2006.

On implementation of arbitration award 1988, Assistant categories were merged with the main category and consequent thereto he became wireman. He was fixed in the pay scale of Rs. 3050-4590. He reached maxima of the said scale on 1st of October, 1996. He was granted in situ promotion in the scale of Rs. 4000-6000 w.e.f. 1st of October, 97. As per arbitration award he was eligible for grant of selection grade w.e.f. 1-1-1981 in the scale of Rs. 330-480, which was revised to Rs. 1200-1800 and subsequently revised to Rs. 4000-6000. He also became eligible for grant of ACP w.e.f. 9th of August, 99 in the pay scale of Rs. 4500-7000, which benefit was not accorded to him. According to him, after grant of in situ promotion, he was being paid in the scale of Rs 4000-6000, which was a scale for the post of electrician. From the post of electrician he was eligible for promotion to the post of foreman, for which post no trade test or competency certificate is needed. It was claimed that selection grade in the scale of Rs. 330-480, which has been revised to Rs. 1200-1800 and further revised to Rs.4000-6000 may be granted, on completion of 8 years of service effect implementation of arbitration award, financial upgradation under ACP Scheme w.e.f. 9-8-99 in the scale of. Rs. 4500-7000 may also be granted, besides revision of his promotional benefits.

3. Claim was demurred by the management pleading that the claimant was appointed as assistant wireman w.e.f. 31-10-72 and not from 30-10-72. It has not been disputed that he reached at the maxima of the basic pay of Rs.4590 in the scale of Rs.3050-4590 on 1-10-96. In situ promotion was given to him in the scale of Rs. 4000-6000 w.e.f. 1-10-97 to 8-8-99, date when implementation of ACP scheme took place. It has been denied that he was eligible for grant of selection grade w.e.f. 1st of January, 1981. It has further been pleaded that for promotion to the post of electrician, the claimant was required to pass trade test and possess electrical supervisory certificate of competency. Neither he passed the trade test nor possess the required competency certificate. As per ACP Scheme, an employee has to be fully eligible in all other aspects viz., educational qualifications, departmental examination, skill/trade test and bench mark etc. to hold a higher post in terms of recruitment rules, the scale of which is to be granted under ACP Scheme. The management referred the matter to Department of Personnel and Training for relaxation of requirement of trade test, educational qualification and supervisory certificate etc., for grant of financial upgradation to wireman under ACP Scheme. The said proposal was turned down. Under these circumstances claimant is not entitled to relief of selection grade or financial upgradation under ACP scheme. His claim may be dismissed.

4. Shri Satish Kumar Sharma, authorised representative of the workman, presented that the dispute hinges for grant of financial upgradation under ACP scheme,

which can be adjudicated on the basis of the scheme and certificate/letters written by the management. He was of the view that no evidence was to be led in the matter. He closed the evidence on behalf of the workman. Ms.Manisha Lavania, authorised representative of the management, also opted not to adduce any evidence in the matter. Therefore, no evidence was put forward by either of the parties.

5. Arguments were heard at the bar. Shri Satish Kumar Sharma, authorised representative, advanced arguments on behalf of the workman. Ms. Manisha Lavania, authorised representative, raised her submissions on behalf of the management. Written submissions were also filed by the parties. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :

6. Espousal letter dated 6-2-2008 has been placed over the record by the workman. As per contents of the said letter two demands were raised by All India CPWD (MRM) Karamchari Sangathan, which are extracted thus :—

- a. Whether the workman is entitled to be granted the benefits of higher pay scale under in situ promotion scheme in the pay scale of Rs. 4000-6000 w.e.f. 1-10-98?
- b. Whether the workman is entitled to be granted higher pay scale of Rs. 4500-7000 as 2nd financial upgradation under ACP scheme?

7. Dispute was raised by the union before the Conciliation Officer, raising the aforesaid two demands before the management. When management contested the claim put forward by the union, no settlement could arrive at. Consequently on receipt of failure report, the appropriate Government referred the dispute for adjudication wherein demand of the union for grant of in situ promotion as well as for grant of financial upgradation under ACP scheme was referred for adjudication. Therefore it is evident that neither at the time of espousal nor before the Conciliation Officer a case was projected that the claimant was entitled for grant of selection grade after 8 years of service on implementation of arbitration award 1988. The appropriate Government had also not referred the dispute for adjudication on that matter. Consequently issue relating to eligibility of the claimant for grant of selection grade in pursuance of arbitration award 1988 has not been referred for adjudication. Therefore, it emerges over the record that claim of the workman that he is entitled for grant of selection grade w.e.f. 1-1-81 in pursuance of arbitration award 1988 is an after thought. The said claim cannot be adjudged herein, since it is beyond pale of the reference.

8. Office Order No. 10(I3)/E-3/EDIII/1403 dated 24-9-08 highlights that in situ promotion was granted to

Shri Rajinder Singh S/o Rattan Singh Wireman (retired) in the scale of Rs. 4000-6000 w.e.f. 1-10-97 till 8-8-99, the date when ACP scheme came into operation. The said office order has been relied by the workman and admitted by the management. Even in its written statement, management concedes that in situ promotion has been granted to the workman from the aforesaid date. Therefore, question raised in the first limb of the reference stands answered. When in situ promotion to Rajinder Singh in the scale of Rs. 4000-6000 was granted by the management, w.e.f. 1-10-97, it is made clear that now there is no dispute on that issue. Consequently, it is made clear that issue relating to the granting of in situ promotion stands satisfied.

9. Thrust of contention of Shri Sharma has been that Rajinder Singh is entitled for financial upgradation under ACP scheme w.e.f. 9th of August, 99. He presents that since Rajinder Singh was getting his wages in the scale of Rs. 4000-6000, on getting in situ promotion, which implies that he was promoted to the post of an electrician. According to him no trade test and competency-certificate was needed for promotion to the post of fireman (electrical). I am afraid that contention advanced by the workman has any weight. It is the case of the workman that he was granted in situ promotion on 1-10-97, when he reached maxima of basic pay of Rs. 4590 on 1-10-96 in the scale of Rs. 3050-4590. In situ promotion in the scale of Rs. 4000-6000 was in the form of financial upgradation. While getting his pay in the scale of Rs. 4000-6000, workman remained a wireman. He never acquired the position of an electrician. For grant of in situ promotion neither educational qualification nor skill/trade test nor bench mark etc. are to be taken into account. Supervisory competency certificate is also not to be possessed for that purpose. In situ promotion is financial upgradation and nowhere enhances the status of an employee in the hierarchy. Therefore, on getting in situ promotion claimant Rajinder Singh was not promoted to the post of electrician. For next financial upgradation under ACP scheme, the claimant has to satisfy the standards for promotion to the post of electrician. For that purpose he was required to pass trade-test and possess supervisory certificate of competency. It is an admitted case that neither the claimant passed any trade test nor possess electrical supervisory certificate of competency.

10. Circular No. 8/1/99-ECX, New Delhi dated 25-5-2001 highlight that ACP scheme is to be implemented directly keeping in view the provisions of DoPT's office memorandum dated 9-8-99. Clarificatory communication dated 10-2-86 annexed to the said circular spell that workers earlier working in assistant category were placed in main category en-block on 7-5-97 and for purpose of grant of financial upgradation under A.C.P. scheme, that date would be bench mark.

11. Circular No.8/1/2007-NR/ECX, New Delhi dated 15-5-2009 lays emphasis that for financial upgradation

under ACP scheme in the next higher grade, one has to pass trade test and possess educational qualification and supervisory competency certificate, prescribed under the recruitment rules. The management had placed OM No. 135034/1/97-Estt..(d), New Delhi, dated 9-8-99 over the record, on the strength of which financial upgradation under ACP scheme was implemented. Two financial upgradations can be granted to an employee on completion of 12 years and 24 years of regular service, subject to his eligibility to the next position, the scale of which is to be granted to an employee for want of actual promotion. For financial upgradation under ACP scheme an employee has to fulfil the required educational qualification and to pass trade test and possess competency certificate, if so required under the recruitment rules. It has also been clarified that existing time bound promotion schemes, including in situ promotion schemes may continue to be operational for the concerned categories of employees. However, the scheme shall not run concurrently with the ACP scheme. The Administrative Ministry/Department shall have option in the matter to choose between the two schemes i.e. existing time bound promotion scheme or the ACP scheme for various categories of employees. However, and in case of switch over from the existing time bound promotion scheme to the ACP scheme, all stipulation viz. redistribution of post, upgradation involving higher functional duties made under the former scheme would cease to operate. The ACP scheme shall have to be adopted in its totality.

12. As is evident, for financial upgradation under A.C.P. scheme an employee has to pass trade test and possess educational qualification and competency certificate required for the post of electrician. He has to render 12 years regular service for financial upgradation under ACP scheme. It is an admitted fact that the claimant was not fulfilling the criteria of passing trade test and possessing electrical supervisory competency certificate. Consequently he is not eligible for promotion to the post of electrician. As detailed above, the claimant was granted in situ promotion on 1-10-97. Therefore, from that date he has to show that he had rendered 12 years of service without any promotion, to claim next financial upgradation under ACP scheme. Since he stands superannuated on 31-5-2006, he had not rendered required service for claiming next financial upgradation under ACP scheme.

13. As provided in office memorandum dated 9th of August, 99, scheme for in situ promotion and financial upgradation under ACP scheme, cannot run concurrently. An employee shall either claim in situ promotion or financial upgradation under ACP scheme. In situ promotion was granted to the claimant on 1-10-97. Therefore, he cannot avail the benefit of financial upgradation under ACP simultaneously. For claiming financial upgradation under ACP scheme, he has to forego in situ promotion. After availing benefit of in situ promotion he cannot claim

financial upgradation under ACP scheme. Therefore, his claim is liable to be rejected on that score too.

14. In view of the foregoing discussion it is evident that the demand of All India CPWD (MRM) Karamchhari Sangathan for grant of financial upgradation to Rajinder Singh under ACP scheme in the scale of Rs. 4500-7000 is neither legal nor justified. The union harbours under a misconception that on getting in situ promotion Rajinder Singh was promoted to the post of electrician and from that post he can be promoted to the post of foreman (electrical) without undergoing trade test and possessing competency certificate. Another misconception was developed by the union that Rajinder Singh can avail benefits under the scheme of in situ promotion as well as financial upgradation under ACP scheme. Misconception of the union stands wiped out with the adjudication referred above. No relief is to be granted to Rajinder Singh. An award is accordingly passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated: 21-1-2010

नई दिल्ली, 3 फरवरी, 2010

का. आ. 604.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं ई. सी. एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण असनसोल के पंचाट (संदर्भ संख्या 23/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/323/2006-आईआर (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 604.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Eastern Coalfields Limited, and their workmen, received by the Central Government on 3-2-2010.

[No. L-22012/323/2006-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

IN THE COURT OF CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Reference No. 23/ITC/2007

Management of Nimcha Colliery of E.C. L.

Vrs.

Secretary, Koyla Mazdoor Congress

SETTLEMENT IN LOK ADALAT

HELD ON 29TH AUGUST AT KUNUSTORIA
GUESTHOUSE

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat.

The Terms of agreement to form part of the Award.

MANORANJAN PATTAIAK, Presiding Officer

FORM 'H'

(See Rule 58) under Industrial Dispute Central
Rules, 1957

Memorandum of Settlement arrived at between Sri Rabi Majhi, Ex.Ug. Loader U.M. No. 115201 of Nimcha Colliery and Management of Satgram Area (ECL)

Representative of Management Person Concerned

- | | |
|--|---|
| 1. Sri S. Saran,
Chief General Manager,
Satgram Area | 1. Sri Rabi Majhi,
Ex.Ug. Loader, Nimcha
Colliery |
| 2. Sri J. S. Sayare, Dy. C.P.M.,
Satgram Area | |
| 3. Sri U. Aich, P.M. Satgram Area | |
| 4. Sri B. Bhowmik, Dy. P.M., Nimcha
Colliery. | |

Short Recital of the Case

1. Sri Rabi Majhi, Ex.Ug. Loader, U.M. No. 115201 of Nimcha Colliery was charge sheeted for absenting from duty from 19-8-2005. A departmental enquiry was conducted, wherein the charges were proved and accordingly Sri Majhi was terminated from his services, on dismissal vide letter No. SAT/Per/Termination/06/1421 dated 22/23-3-2006.
2. Sri Rabi Majhi, Ex. U.G. Loader, U.M. No. 115201 of Nimcha Colliery had submitted mercy application for his re-instatement in service and the Competent Authority, ECL has been pleased to approve re-instatement of his service on revocation of his aforesaid order of dismissal without payment of any back wages subject to ascertaining his medical fitness as communicated

by P.M. (L & IR), ECL, HQ vide letter Ref. No. ECL/CMD/C-6 (D)/L & IR/09/DA/863 dated 7-8-2009.

unauthorised and/or habitual absence from duty.

10. The Agreement is signed by both the parties on 16-9-2009.

TERMS AND CONDITIONS OF SETTLEMENT

1. Agreed that Sri Rabi Majhi, Ex. U.G. Loader, U.M. No. 115201 of Nimcha Colliery will be re-instated in service in his previous designation as he has been declared MEDICALLY FIT FOR UG JOB by the competent medical board, Satgram Area and to be posted in any of the colliery under Satgram Area where there is requirement.
2. Agreed that this settlement resolves the dispute fully and finally. Neither the workman concerned nor his Union shall raise any dispute in any forum/ court of law after this settlement in this regard. Even he has assured for unconditional withdrawal of his CGIT Case No. 23/2007 before his reinstatement. It is also agreed that the person concerned will also submit a "NO DISPUTE" certificate in this regard to the management. Process for his Re-instatement in service will be made accordingly.
3. Colliery Authority have confirmed that Sri Rabi Majhi has not yet drawn his gratuity from the company neither drawn his CMPF.
4. Agreed that the Ex-employee concerned will not be entitled for any back wages for the period of his idleness and the period of his absence/ idleness shall be treated as DIES-NON.
5. Agreed that the Ex-employee will be allowed the benefit of continuity of service for the period of his idleness for the purpose of computation of his final gratuity payment only.
6. Agreed that the ex-employee on such re-instatement in service shall be on probation for a minimum period of one (1) Year and the same will be confirmed only on receipt of satisfactory performance certification on expiry of probation period by CGM/GM on the area.
7. Agreed that the instant settlement has been arrived with the free consent of the ex-workman concerned as he has found the settlement to be reasonable, just and free from any kind of influence.
8. Agreed that a copy of this Memorandum of Settlement shall be sent to the CGI, Asansol/ Regional Labour Commissioner (C), Asansol for registration as per I.D. Act, 1947.
9. The workman will submit his undertaking that in future he will not commit the misconduct of

Management Representatives Ex-Workman Concerned

- | | |
|---|--|
| 1. (S. Saran)
Chief General Manager,
Satgram Area | 1. (Rabi Majhi)
Ex. Ug. Loader/Nimcha
Colliery |
| 2. (J. S. Sayare)
Dy. Chief Personnel Manager,
Satgram Area | |
| 3. (U. Aich)
Personnel Manager,
Satgram Area | |
| 4. (B. Bhowmik)
Dy. Personnel Manager,
Nimcha Colliery | |

WITNESSES

Name Designation U.M. No. Area/Colliery Signature

1. Sri Lakhi Narayan Majhi TR (T)/UG 188672 Nimcha
2. Sri Sona Majhi, Pant. Optr. 353383 Nimcha

नई दिल्ली, 3 फरवरी, 2010

का. आ. 605.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 44/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-2-2010 को प्राप्त हुआ था।

[सं. एल-12012/174/95-आईआर (बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 605.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 44/96) of the Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 03-02-2010.

[No. L-12012/174/95-IR(B-I)]

SURENDRA SINGH, Desk Officer

अनुबंध

नई दिल्ली, 3 फरवरी, 2010

केन्द्रीय औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय,
जबलपुर म.प्र.

डी.एन. दीक्षित, पीठासीन अधिकारी

प्र.क्र.सीजीआईटी/एलसी/(आर) (44)/96

डिप्टी जनरल सेक्रेटरी,

स्टेट बैंक ऑफ इंडिया स्टाफ कांग्रेस

द्वारा श्री एन. रघुनाथराव,

श्री बी.के. सिन्हा का मकान 45/46,

दयानगर, झारिया बिल्डिंग,

यादव कालोनी रोड, जबलपुर(मप्र)

... प्रार्थी

वि.

मुख्य महाप्रबंधक,

भारतीय स्टेट बैंक

स्थानीय प्रधान कार्यालय,

होशंगाबाद रोड, भोपाल-482002

... प्रतिप्राथी

अवार्ड

दिनांकित 09-01-98

1. भारत सरकार, श्रम मंत्रालय, नई दिल्ली ने अपने आदेश संख्या : एल-12012/174/95-आई.आर. (बी) दिनांकित 6-2-96 के द्वारा निम्नलिखित विवाद निराकरण हेतु इस अधिकरण को भेजा है :

अनुसूची

“क्या प्रबंधन भारतीय स्टेट बैंक, भोपाल (मप्र) के प्रबंधकों द्वारा श्री एन. रघुनाथराव एक्स-डाय इट्री आपरेटर, की सेवाएं दिनांक 15-10-92 से समाप्त किये जाने की कार्यवाही न्यायोचित है। यदि नहीं तो संबंधित कर्मकार किस अनुतोष का हकदार है।”

2. दिनांक 25-11-91 को प्रकरण न्यायालय में श्रमिक की साक्ष्य के लिये नियत था। इस दिनांक को श्रमिक अनुपस्थित हो गया और उसके विरुद्ध एकपक्षीय कार्यवाही की गई। इस दिनांक से आज तक श्रमिक ने एकपक्षीय कार्यवाही निरस्त कराने की कार्यवाही नहीं की। ऐसा प्रतीत होता है कि श्रमिक को वर्तमान विवाद में कोई रुचि नहीं है।

3. श्रमिक ने अपना पक्ष इस न्यायालय को प्रस्तुत नहीं किया। इस कारण प्रबंधन के पक्ष में अवार्ड दिया जाता है। दोनों पक्ष इस प्रकरण का अपना-अपना व्यय वहन करें।

4. अवार्ड की प्रतियां नियमानुसार भारत सरकार, श्रम मंत्रालय, नई दिल्ली को प्रेषित की जाती हैं।

डी. एन. दीक्षित, पीठासीन अधिकारी

का. आ. 606.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 84/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-2-2010 को प्राप्त हुआ था।

[सं. एल-41012/217/94-आईआर(बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 606.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/96) of the Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur as shown in the Annexure. in the Industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 03-02-2010.

[No. L-41012/217/94-IR(B-1)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/84/96

Presiding Officer : Shri Mohd. Shakir Hasan

Shri Ram Gopal Manbodh,

Gram: Baskhapa,

Post Sohagpur,

Distt. Hoshangabad

... Workman/Union

Versus

Divisional Railway Manager,

Central Railway,

Jabalpur.

... Management

AWARD

Passed on this 6th January, 2010

1. The Government of India, Ministry of Labour vide its Notification No. L-41012/217/94-IR(B) dated 19-3-96 has referred the following dispute for adjudication by this Tribunal:—

“Whether the management of Central Railway, Jabalpur (MP) in terminating the services of Shri Ram Gopal Manbodh, Ex. Gangman w.e.f. 16-7-86 is legal and justified? If not, what relief the workman concerned is entitled to?”

2. The case of the applicant in short is that he was appointed as Gangman under Way Inspector, Narsinghpur in Railway service. it is stated that the chargesheet was

issued vide No. Staff/CAS/Bagra/RM/dated 4-7-84 against him for abusing and pushing the mate of the Gang on 26-6-1984. He denied the charges but the departmental enquiry was initiated without any formal order. The applicant is said to have nominated his defence representative Shri T.N. Tiwari, Asstt. Station Master but the non-applicant Assistant Engineer, Narsinghpur did not issue proper order to get him relieved from his duties to assist the applicant. The enquiry proceedings were conducted and the witnesses were examined but except the complainant and Lakhanlal, others had not supported the occurrence. It is stated that without proper findings of the Enquiry Officer, the applicant was punished by the order of removal from service w.e.f. 16-7-86 vide order dated 9-10-86. It is stated that the enquiry proceeding is perverse and is not based on material facts brought on the enquiry proceedings. It is submitted that the punishment is too severe, harsh and disproportionate to the minor incident. The Disciplinary Authority as well as Appellate Authority had passed non-speaking order without application of mind. It is submitted that the reference be answered in favour of the applicant.

3. The non-applicants appeared and filed Written Statement by way of reply. The case of the non-applicants, inter alia, is that the applicant was removed from the service w.e.f. 9-7-1986 whereas the dispute is raised in the year 1996 at a very belated stage. The applicant was working in the department which was not an Industry and as such it is not maintainable. It is stated that there is no illegality or irregularity in issuing chargesheet against the applicant for his committing misconduct under rules. The misconduct was duly proved by the evidence of the co-workers of the applicant. It is denied that punishment imposed on him is severe. The applicant was found abusing the mate on duty and dereliction of duty which are grave misconduct and penalty imposed is proper and justified. It is stated that when the defence representative did not appear, the applicant preferred to defend himself. The applicant is punished by a reasoned order. It is submitted that the enquiry was conducted according to rules and full opportunity was given to the applicant to defend himself. It is submitted that the applicant is not entitled to any relief.

4. On the basis of the pleadings of both the parties, the following issues are framed to answer the reference—

- I. Whether the departmental enquiry conducted against the applicant is proper and valid?
- II. Whether the punishment imposed on the applicant is just and proper?
- III. To any other relief the applicant is entitled to?

5. Issue No. I

This issue is already taken up as a preliminary issue by the then Tribunal on 18-3-99. After considering the entire

materials on record, the then Tribunal came to the conclusion on 18-3-99 that there is no defect or deficiency in the enquiry proceedings. It was held that the enquiry was conducted in accordance with law and the procedure adopted in the departmental enquiry was proper, valid and legal. This order is not challenged by the applicant in any court of law. As such this issue is already decided on 18-3-99 against the applicant.

6. Issue No. II and III

Now the important question is as to whether the punishment is proper and justified. The applicant has not examined any oral evidence in the case. The applicant is also not examined himself in the case. The non-applicant have admitted the documents of the enquiry proceedings filed by the applicant. The dismissal order (Annexure A-3) shows that the disciplinary authority after considering the enquiry report and with the finding of the enquiry officer, hold that the applicant was guilty of the charges. To coming to the conclusion for serious misconduct, the disciplinary authority found that it was proved that the applicant assaulted the mate of unit No.3 and abused him while on duty on the alleged date. As such, he was guilty of serious misconduct. Moreover, the order of the appellate authority, which is Annexure A/4, shows that the appellate authority further satisfied from the service record of the applicant, that he was penalized many times in the past and therefore did not interfere in the order of Disciplinary Authority. Under the circumstances mentioned above, there is no necessity to interfere in the order of punishment. Accordingly the reference is answered against the applicant and in favour of the non-applicants.

7. In the result the award is passed without any order to costs.

8. Let the copies of the award be sent to the Government of India, Ministry of Labour and Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 3 फरवरी, 2010

का. आ. 607.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम/न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 122/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-2-2010 को प्राप्त हुआ था।

[सं. एल-12012/49/96-आई आर (बी-1)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 607.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No. 122/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 03-02-2010.

[No. L-12012/49/96-IR(B-I)]

SURENDRA SINGH, Desk Officer
ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL
TRIBUNAL CUM-LABOUR COURT, JABALPUR**

No. CGIT/LC/R/122/97

Presiding Officer : Shri Mohd. Shakir Hasan

Shri Mahesh Kumar,
S/o Shri Onkar Lal, 17,
Lalaramnagar, Indore

... Workman/Union

Versus

The Asstt. General Manager,
State Bank of India,
G.P.O Branch, Indore.

... Management

AWARD

Passed on this 1st day of January, 2010

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/49/96-IR(B) dated 14-5-97 has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the management of State Bank of India in terminating the services of Shri Mahesh Kumar S/o Onkarlal w.e.f. 24-5-95 is justified? If not, to what relief the workman is entitled?”

2. The workman was noticed to appear in the reference and on 18-7-06, the workman appeared in person but did not file statement of claim. Lastly the learned the then Tribunal proceeded exparte against the workman on 23-3-2008.

3. The management/non-applicant/Bank appeared and filed Written Statement. The case of the management, in short, is that the workman was employed on purely daily casual labour basis on contract at the G.P.O Branch of the State Bank of India, Bhopal time to time on exigency of work. He was free also not to come on work. It is stated that he worked till May 1995 but had never worked for 240 days in any calendar year particularly preceding the date with reference. Thus his non-engagement is not a retrenchment within the meaning of Section 2(00) of the Industrial Dispute Act, 1947 (in short I.D. Act 1947). It is stated that Sec-25-F of the I.D. Act, 1947 is also not applicable in the case. Under the circumstances, the reference be answered in favour of the non-applicant Bank.

4. Now the only question for determination is as to whether the action of the management is justified or not?

5. To prove the case, the management/non-applicant has adduced oral evidence. The sole management witness Abhay K. Pandey is examined in the case. He is Assistant General Manager, S.B.I. G.P.O Branch, Indore. He has supported this fact in his evidence that the workman was engaged on contract basis as casual labour on exigency of work. He has stated that he had never worked for 240 days in any of the periods in one calendar year particularly preceding the date with reference. His evidence shows that he was not retrenched under Sec-2(00) of the I.D. Act and Section 25-F of the I.D. Act, is not applicable. His evidence is unrebutted. There is no reason to disbelieve the evidence of this witness. Accordingly the reference is answered in favour of the management Bank.

6. On the basis of discussion made above, the award is passed exparte against the workman without any order to costs.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour and Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 3 फरवरी, 2010

का. आ. 608.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नार्थवेन रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 38/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-2-2010 को प्राप्त हुआ था।

[सं. एल- 41012/150/2004-आई आर (बी-1)]

सुरेंद्र सिंह, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 608.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 38/2005) of the Central Government Industrial Tribunal-Cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial dispute between the management of Northern Railway and their workman, received by the Central Government on 03-02-2010.

[No. L-41012/150/2004-IR(B-I)]

SURENDRA SINGH, Desk Officer
ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
LUCKNOW**

PRESENT

N. K. PUROHIT PRESIDING OFFICER

I.D. No. 38/2005

Ref. No. L-41012/150/2004-IR(B-I) dated : 20-09-2005

BETWEEN

The Divisional Organization Secretary, Uttar Railway
Karmchari Union, 283/63 Kha Garhi Kanaora (Premwati
Nagar) PO Manaknagar Lucknow-226001

AND

The Sr. Divisional Personnel Office Northern Railway,
DRM Offices Hazratganj, Lucknow-226001

AWARD 20-01-2010

1. By order No. L-41012/150/2004-IR(B-I) dated: 20-09-2005 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Divisional Organization Secretary, Uttar Railway Karmchari Union, 283/63 Kha Garhi Kanaora (Premwati Nagar) PO Manaknagar Lucknow and the Sr. Divisional Personnel Officer, Northern Railway, DRM Office, Hazratganj, Lucknow for adjudication.

2. The reference under adjudication is as under :

“क्या रेलवे प्रबंधन लोको वर्कशॉप उत्तर रेलवे चारबाग लखनऊ द्वारा श्री महेश चन्द्र साहू पुत्र श्री राम नारायण साहू टि.नं.-एल.एक्स.-73 को उसके कनिष्ठ को दी गई पदोन्नति की तिथि, दिनांक 01-01-88 से स्किल्ड वेल्डर में व श्रेणी-II वेल्डर में दिनांक 29-06-95 को पदोन्नति देकर प्रोफार्म आधार पर मात्र वेतन निर्धारण करके देय पदोन्नति एरियर का भुगतान न करना न्यायोचित तथा न्यायसंगत है ? यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी है ?”

3. Background of the undisputed facts in a nutshell are as under :

4. The Workman Sh. Mahesh Chandra Sahu was working as Khalasi Helper in Loco Workshop, Northern Railway, Charbagh, Lucknow. A criminal case under 392,411 IPC was registered against him therefore, he was placed under suspension w.e.f. 18-12-1987. The workman was acquitted in the criminal case no. 1272/99 vide judgment dt. 30-4-2002 of the court of ACJM, Unnao. His suspension was revoked on 1-3-2000 and suspension period was regularized vide order no. 19 dated 16-1-2003. Subsequently, vide office order no. 66 dt. 13-3-2003, the workman was promoted to the post of skilled welder Gr. III w.e.f. 1-7-88 and as skilled welder Gr. II w.e.f. 29-6-95, from the date his junior Adityam Prakash was promoted. The workman was promoted on proforma basis but arrears of salary of the promotion post was not given.

5. The contention of the workman is that he was completely exonerated in the criminal proceeding against him and his suspension period has been regularized treating him on duty for that period with all payable benefits to the workman, therefore, he is entitled to get arrears of salary on the promotion post from the date of his proforma promotion. But despite several representations the opposite

party did not pay any heed to his request. He has also contended that the normal rule “no work no pay” is not applicable in the matter of the workman, therefore, the action of the management in giving promotion to the workman on proforma basis and not giving arrears of the salary on the promotional post is unjustified.

6. The management of railway has refuted the claim of the workman and has contended that the workman was permitted to resume his duty on 1-3-2000 and the period of his suspension w.e.f. 18-12-87 to 1-3-2000 has been regularized as duty for the purposes of benefit only and not for the purposes of payment of his salary for the said period. The word benefit does not mean and include the salary. Further the workman was given proforma fixation as per Railway extent Rules and since the workman did not shoulder the duties and responsibility of the higher promoted post during suspension period and he never made himself available to shoulder duty and responsibility of his post as such he is not entitled to any amount of his salary for the said period except as provided by law. Therefore, the claim is liable to be rejected with no relief.

7. In rejoinder, no new facts have been introduced averments made in the statement of claim have been reiterated.

8. The workman has himself examined whereas Sh. Nagendra Kumar has been examined by the railway management in support of their respective cases. The workman has produced photo copies of the following documents in support of his case;

1. Office order No. 19 dt. 16-1-2003 pertaining to pay fixation (C-5)
2. Copy of judgment of ACJM Court, Unnao dt. 30-4-2002 (C-6 to C-11)
3. Copy of the letter dt. 2-9-2002 stating therein that no appeal against the judgment dt. 30-4-2002 has been filed (C-7).
4. Order No. 66 dt. 13-3-2003 Chief Workshop Manager regarding proforma promotion of the workman (C-8)
5. Representation of the workman for payment of arrears dt. 13-3-2003 (C-9)
6. Letter dt. 25-2-2003 mentioning therein that name of the workman has been included in the approved list of Welder Gr.II (C-10)

9. Heard the learned representative of both sides and perused the relevant material on record.

10. The learned representative on behalf of the workman has submitted that arrears of salary has been wrongly denied by the opposite party on the basis that the workman has not shouldered the responsibility of promotional posts whereas employee involved in any criminal case is acquitted he is treated on duty for all

purposes and becomes entitled for wages as he would have earned had he not involved in criminal case and suspended. In such cases the principle of "no work no pay" is not applicable. He has further contended that after acquittal the workman has been treated on duty with all payable benefits vide order dt. 16-1-2003 (C-5). Thus, he is entitled for the payment of arrears due on account of his promotion as skilled Welder Gr. III & Gr. II w.e.f. 1-7-88 and 29-6-1995 respectively. In support of his contention he has placed reliance on (1) 1991 AIR SC 2010 Union of India Vs. K. V. Jankiraman and 2008 LAB.I.C. 3477 T. Patahorse Vs. Kerla Water Authority & others.

11. Per contra, the learned representative on behalf of the railway management has urged that there is no documentary evidence on the record to show that workman ever remained available to shoulder the work of higher promoted post hence on account of non shouldering the work and responsibility of promoted higher post he is not entitled to any arrears of salary. The principle of 'no work no pay' is also applicable in the present matter. Therefore, action of the management in not giving arrears of salary from the date of proforma promotion is justified. In support of his contentions reliance has been placed on following case laws;

1. 2009 All C.J. Page 642 V.K. Yadav Vs. State of UP & others.
2. 2008(5) AWC 4839(SC) Union of India Vs. B.M. Jha.
3. 2007 AIR (259) 1 SE Union of India Vs. Tarsem Lal & others.

12. In view of the above rival submissions of both the sides the question thus arises for consideration is whether the workman is entitled for the payment of arrears from the date of his proforma promotion as skilled Welder Gr. III & Skilled Welder Gr. II w.e.f. 1-7-88 and 29-6-1995 respectively.

13. The workman in his examination in chief on affidavit has only reiterated the averments in his claim statement. In cross-examination he has stated that he had attended the office during suspension period but his presence was not marked by the establishment clerk.

14. In rebuttal, the railway management witness Sh. Nagendra Kumar, Head Clerk apart from reiterating the contents of the written statement, has also stated that workman had remained absent during suspension period deliberately. He has also stated that Sh. Adatyam Prakash who was junior to the workman was promoted on 29-6-1995 due to administrative lapse. In his cross-examination he has stated that payment have been made to the workman for the suspension period considering him on duty for the said period.

15. The learned representative on behalf of the railway management has referred para 228 of IREM which

is pertaining to erroneous promotion. Para 228 of IREM is as follows :

"228 Erroneous Promotion—(I) Sometimes due to administrative errors, staff are overlooked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative errors can be of two types :

- i. Where a person has not been promoted at all because of administrative error, and
- ii. Where a person has been promoted but not on the date from which he would have been promoted but for the administrative error.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-a-vis their juniors already promoted, irrespective of the date of promotion. Pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts."

16. He has also referred circular dt. 15/17 Sept. 1964 which interalia provided as follows;

"No arrears on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher post."

17. In AIR 2007 SC 259 referring above para 228 of IREM & Railway Board circular dt. 15/17 Sept. 1964 Hon'ble Apex Court has observed that pay and allowances from the date of proforma promotion instead of from date of actual promotion is not justifiable in view of principle of 'no work of no pay'. In 2008 (5) AWC 4831 the appellant therein was granted retrospective promotion from 27-8-84 and question under consideration was regarding payment of pay & allowances for the higher post from the date of notional promotion. Hon'ble Apex Court held that arrear of salary not payable to employee on his notional promotion from retrospective date in view of principle of "no work no pay". In 2009 All. CJ 642 the petitioner therein challenged his termination order Hon'ble Apex Court stayed the operation of termination order vide order dt. 2-7-91 & writ petition was finally allowed vide order dt. 9-11-98 & termination order was quashed. The petitioner claimed that he was allowed to join on 24-8-91 but he had not been allotted any work & he came to know about the final order only in the year 2002 while denying his claim for salary for period during which he was absent, Hon'ble High Court observed that petitioner is not entitled for the salary during which he has not worked.

18. But in the above case laws decision of Full Bench 1991 (4) SCC 109 Union of India Vs. K.V. Jankiraman has not been referred or discussed wherein Hon'ble Apex Court has observed that arrears of salary may be granted from the date of notional promotion having regard to the circumstances of the case where the proceeding has been delayed at the instance of employee himself or the employee acquitted on benefit of doubt or non availability of evidence because of employees acts, the concerned authority must decide his entitlement to back pay and extent thereof. Hon'ble Apex Court has further observed that when an employee is completely exonerated or acquitted he should not be deprived of any benefits including the salary of the promotional post. In the said case it was contended on behalf of the appellant therein that a person is not entitled to salary of the post unless he assumes the charge of the same. In this regard F.R. 17(1) of the Fundamental Rules were referred which envisages that subject to any extent specifically made in these rules and provision of Sub Rule (2), an officer shall begin to draw pay and allowances attached to his tenure of post w.e.f. the date when he assume the duty of that post, and shall cease to allowed them as soon as he ceases to discharge those duties, provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence. In this regard Hon'ble Apex Court has held as under;

"We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases."

19. In the present case the workman had remained under suspension for the period 18-12-87 to 1-3-2000 and vide office order No. 66 dt. 13-3-2003 he was given proforma promotion on the post of skilled Gr.III & Gr.II w.e.f. 1-7-88 and 29-6-1995 respectively. The management witness Sh. Nagendra Kumar has stated in his statement on oath that the workman Sh. Adayam Prakash was junior to him was promoted on 29-6-1995 due to administrative lapse. But in written statement no such plea of erroneous promotion has been taken. It is evident from the pleadings in written statement that the workman was placed under suspension he because was facing criminal trial for the offence under Section 392 & 411 IPC and after clear acquittal in the criminal case his suspension was revoked and after regularization of his suspension period the workman was promoted on the date his junior Sh. Adayam Prakash was promoted. It is not the case of the railway management that the workman was acquitted on benefit of doubt or non

availability of evidence because of the workmen's act therefore, he is not entitled for back pay from the date of his proforma promotion. Thus, in above factual backdrop, it was not possible for the workman to shoulder the duties and responsibility during the suspension period.

20. Thus, in view of the above legal proposition in the K. V. Jankiraman's case, the action of the railway management denying the arrears of salary to the workman on promotional posts is not justified. Resultantly, the workman is entitled for receiving the payment of arrears accrued to him, from the dates of his proforma promotion as Skilled Welder, Gr.III i.e. 1-7-1988 and as Skilled Welder Gr.II i.e. 29-6-1995.

21. The reference under adjudication is answered accordingly.

22. Award as above.

Lucknow: 20-1-2010

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 3 फरवरी, 2010

का. आ. 609.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 21/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-12012/36/2005-आईआर (बी-11)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 609.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.21/2005) of the Central Government Industrial Tribunal/Labour Court-I, Delhi now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 2-2-2010.

[No. L-12012/36/2005-IR(B-II)]

U. S. PANDEY, Desk Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
No. 1, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 21/2005

Nirmala w/o Shri Subhash,
R/o 4th Class Servants Quarters,
Jat High School, Rohtak

....Workman

Versus

The Manager,
Central Bank of India,
Near Jeevan Eye Hospital,
Rohtak

....Management

AWARD

A part time sweeper was engaged by the branch manager to work at extension counter of the Central Bank of India, located near Jat College Rohtak, Haryana. She used to sweep the extension counter and fetch drinking water for employees working there. She was paid labour charges, which were debited to miscellaneous expense account of the bank. On 4th of November, 2003 she was disengaged. She raised a dispute before the Conciliation Officer, seeking her reinstatement in services. When conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal, vide order No. L-12012/36/2005-IR (B-II), New Delhi dated 13th of July, 2005, with the following terms:

“Whether the claim of Smt. Nirmala that she was engaged as part time sweeper during the period from 27-10-1993 to 4-11-2003 is correct? If so, whether the action of the management of Central Bank of India in terminating the services of Smt. Nirmala w/o Shri Subhash, part time sweeper w.e.f. 4-11-1993 is just and legal and what relief the workman is entitled to?”

2. Claim statement was filed by Smt. Nirmala pleading therein that she was serving at extension counter of the Central Bank of India, located near Jat College Rohtak, since 2nd of November, 93 as a part time sweeper. She worked at the said extension counter till 4-11-03 to entire satisfaction of the management. She completed services for more than 240 days in every calendar year. She became entitled to the benefit of the provisions of the Industrial Disputes Act, 1947 (in short the Act). Her services were dispensed with on 4-11-2003, in violation of the provisions of Section 25-F of the Act. Principle of last come and first to go was not followed. The bank violated the provisions of Section 25-G and 25-H of the Act. Termination of her services is illegal, unwarranted and against the provisions of law. She claims reinstatement of her service with continuity and full back wages.

3. Management demurred her claim pleading that she was not an employee of the bank, hence relationship of employer and employee never existed between the parties. She was hired on contract for sweeping the bank premises and providing drinking water. She was working part time and paid labour charges, which were debited to miscellaneous expense account of the bank. It has been denied that there existed relationship of employer and employee between the parties and provisions of the Act became applicable to the claimant. It has been claimed that since Smt. Nirmala was not a workman she cannot claim the

benefit of the provisions of Section 25-F, 25G and 25H of the Act. Management requests that her claim may be dismissed.

4. Affidavit was tendered on behalf of Smt. Nirmala as her evidence. However Smt. Nirmala opted not to enter in the witness box for the purpose of cross-examination. No opportunity could be accorded to the management to purify her testimony by an ordeal of cross-examination. Under these circumstances facts presented by Nirmala in her affidavit dated 5-8-06 cannot be read in evidence against the management.

5. Nirmala opted not to appear before the Tribunal. The matter was proceeded under rule 22 of industrial Disputes (Central) Rules 1957. Shri P. J. Kumar, A. K. Sharma and Harish Chand Chawla were present before the Tribunal for their depositions. They filed their affidavits as evidence. Since none was there on behalf of the workman to cross-examine them, hence they were discharged and evidence of the management was closed.

6. Shri A. R. Verma, authorized representative, advanced arguments on behalf of the management. None came forward on behalf of the workman to raise submissions. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My finding on issues involved in the controversy are as follows:

7. Though in her affidavit Nirmala claims that she was serving at extension counter of the bank, located near Jat College Rohtak, since 2-11-93 as a part time sweeper, yet she opted not to enter the witness box to accord an opportunity to the management to cross-examine her. Cross-examination of a witness is one of the most efficacious test for discovery of truth. The adverse party is to be accorded a right to cross-examine the witness, so that it may test his veracity on the standards of ordinary human behaviour, natural course of events and tenets of veracity. Therefore, an opportunity to cross-examine the witnesses, to be accorded to the opposite party, should be effective one. When such an opportunity is not accorded to an opposite party, it cannot be said that the facts testified by the witness stood test of truthfulness and veracity.

8. When a witness enters the witness box, first he is to be examined by the party calling him and then the adverse party may cross-examine with him. Without an opportunity to cross examine the witness, it cannot be said that his testimony stood concluded. Therefore, opportunity to an adverse party to cross-examine the witnesses is an important tool to shake credit of the witness. When this important right is not accorded to the adverse party, facts testified by the witness cannot be used, except in exceptional circumstances. Those exceptional circumstances may be, as use of the testimony in the form of dying declaration or when the witness is kept out of the way by the adverse party, or he became incapable of giving his evidence or

whose presence cannot be procured without an undue amount of delay or expense. Here in the case no exceptional circumstances have been brought over the record, to justify reliance on testimony of Smt. Nirmala Devi. Therefore, facts projected by Smt. Nirmala Devi in her affidavit cannot be read as evidence. Consequently affidavit of Smt. Nirmala is brushed aside from consideration of her cause.

9. Shri P. J. Kumar swears in his affidavit that Nirmala Devi used to visit the branch of the bank occasionally as a part time sweeper. She was never recruited by the bank. There was no relationship of employer and employee between Smt. Nirmala Devi and the management bank. Shri Harish Chand Chawla swears in his affidavit that Smt. Nirmala Devi used to do work for 1-1/2 hours in the bank. Shri A. K. Sharma also projects the same facts. Therefore, it is emerging over the record that Smt. Nirmala Devi worked as a casual worker, who used to perform job for one and a half hour in a day in the bank. She was never recruited in accordance with the recruitment rules. No evidence come over the record to the effect that she worked with the bank during the period from 27-10-93 to 4-11-2003. Consequently first limb of the reference can not be answered in favour of the claimant.

10. Services of Smt. Nirmala Devi were disengaged, when there was no work for her. She was a casual daily rated employee. There is a complete lack of evidence that Nirmala Devi was performing part time job. She was casually engaged, as and when exigency arose. It has not come over the record that she rendered 240 days continuous service in a calendar year, preceding the date when her services were disengaged. Her disengagement does not amount to retrenchment. Not even an iota of fact came over the record to justify her reinstatement in service of the bank. Bank has not violated the provisions of the Act when her service were dispensed with.

11. There is other fact of the coin. In Uma Devi [2006(4) SCC I] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the post which were held by them in temporary or adhoc capacity for a fairly long spell. The Court ruled thus:

“With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between

regularization and making permanent, was not emphasized here—can only encourage the State, the modal employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in *Piara Singh* [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgment therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent.”

12. In view of the aforesaid facts it is concluded that Nirmala Devi failed to show that she was a part time employee, who rendered continuous service of 240 days in a calendar year, preceding the date of her disengagement. She could not show that dispensation of her service amounted to retrenchment, within the meaning of clause (00) of Section 2 of the Act. Hence she cannot claim protection of the provisions contained in Section 25-F, 215-G and 25-H of the Act. Under these circumstances, her claim for reinstatement cannot be entertained. Her claim is rejected. An award is accordingly passed.

Dated : 15-1-2010

DR. R. K. YADAV, Presiding Officer

नई दिल्ली, 3 फरवरी, 2010

का. आ. 610.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई.डी.बी. आई. चेन्नई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 94/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-12011/87/2009-आई आर (बी-11)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 610.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 94/2009) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of IDBI, Chennai and their workman, which was received by the Central Government on 2-2-2010.

[No. L-12011/87/2009-IR(B-II)]

U. S. PANDEY, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Friday, the 29th January, 2010

Present : A. N. Janardanan, Presiding Officer

Industrial Dispute No. 94/2009

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of IDBI Ltd. and their Workmen)

BETWEEN

The Secretary, : 1st Party/Petitioner
 IDBI Employees Association
 115, Anna Salai, Saidapet
 Chennai-600 015

Versus

The General Manager, : 2nd Party/Respondent
 Human Resources Department
 IDBI Ltd.
 Chennai Branch Office,
 115, Anna Salai, Saidapet
 Chennai-600015

APPEARANCE

For the 1st Party/Petitioner : Sri A. Govindasamy
 For the 2nd Party/Management : Ex-parte

AWARD

The Central Government, Ministry of Labour *vide* its Order No. L-12011/87/2009-IR(B-II) dated 4-11-2009 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :—

“Whether the impugned transfer order dated 24th January, 2009 issued by the management of IDBI transferring Smt. R. Saraswathi, Special Assistant and 7 others is legal and justified? What relief the workmen concerned are entitled to?”

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 94/2009 and issued notices to both sides. First party entered appearance and filed Claim Statement. Second party did not appear in spite of four adjournments given and is therefore called absent and set ex-parte.

3. The contentions raised in the Claim Statement briefly read as follows:

The Respondent by unilateral, arbitrary and mala fide orders is effecting inter-mobility in the name of transfer on administrative requirements vide Office Order No. 3984 dated 24-1-2009 in respect of 8 Clerical employees of

Chennai Branch Office (erstwhile Development Bank Segment) to other branches of Commercial Bank Segments. It is prayed that an award may be passed holding that the order transferring Smt. R. Saraswathi, Special Asstt. and 7 others is illegal and not justified directing the Respondent to annul the transfer orders and post them back to their parent office. Recruitment of staff is done only office-wise. During the last 30 years staff of Chennai Branch Office were not liable for inter-office transfers. In fact it had not been allowed also. By IDBI (Transfer of Undertaking Repeal) Act, 2003, IDBI was converted into a deemed banking company to attend to banking business too. Under Section 5(i) of the IDBI Bill, 2002 the conditions of service and other terms of employees were to remain unchanged. Pending finalization of integration plan it was agreed that there would be no inter-mobility of workmen between the two segments. No integration plan as above has so far been entered. There is adequate work for the Special Assistants in Chennai office. But they have been transferred to Commercial Bank branches where there is no such post. The transfer is in violation of provisions. It is not a question of simple transfer but of exposing the employees to a new environment and to do such types of work to which they are not used to as the job profile and content, working conditions, working hours, wages, service conditions against subsisting bipartite settlement and without any discussion. It is also in breach of assurances given by successive Hon'ble Finance Ministers in Parliament in safeguarding the terms and conditions of service of the employees. The order is without jurisdiction, violative of Section 5(i), contrary to the solemn assurance of the Hon'ble Finance Minister, without given notice under Section 9A of the ID Act, in contravention of bipartite settlement dated 16-8-2002 without providing for adequate medical facilities including to female staff violating subsisting settlements on promotional avenues violative of Article-14 and 16 as well as being hit by doctrine of promissory estoppel and legitimate expectation. Hence the prayer.

4. The Respondent being absent and is set ex-parte, no counter Statement is put on record.

5. On behalf of the workmen, WW1 was examined by way of Proof Affidavit and Ex. W1 to Ex. W21 have been marked.

6. Points for consideration are:

(i) Whether the transfer order of the management is legal and justified?

(ii) To what relief the concerned workmen are entitled?

Points (i) and (ii)

7. The uncontroverted pleadings supported by the evidence let in by WW1, Secretary of the First Party Union espousing the cause of the 8 petitioners who are transferred

by the First Respondent from the IDBI to its commercial banks prima-facie shows that the action of the Respondent/Management is not justified or legal. The Respondent by shunning this Tribunal has not put forth what its justification is against its action in regard to the impugned transfer of 8 Special Assistants in its employ against what is held out to be illegal and prejudicial in manifold ways to the workmen. Though, transfer of employees is the prerogative and within the realm of the Management it cannot be done against accepted and well known rules or procedures settled between the two parties and against their legitimate expectations and that too all on a sudden without any discussion with them. The workmen whose cause is espoused by the Petitioner Union appear to be seriously prejudiced by the act of the Respondent which is assailed as illegal and against the rules and procedures in vogue. Therefore, there is no reason why the action of the Management is not to be set aside thereby restoring the status quo ante position in favour of the petitioners as had been obtaining prior to 24-1-2009, the date of the impugned order. Hence it is held that the transfer order is not legal and justified and the Respondent is directed to annul the impugned order re-transfer the employees to their parent office within one month.

8. The petitioners are entitled to relief as above and the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 29th January, 2010).

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the I Party/Petitioner : WW1.
Sri K. Satyanarayanan

For the II Party/Respondent: None

Documents Marked :

On the Petitioner's side

Ex. No.	Date	Description
Ex.W1	24-01-2009	Order No. 3984 dated the 24th January, 2009 —impugned Office Order.
Ex.W2	23-1-1998	Sanction of additional posts.
Ex.W3	June 1998	Advertisement issued by the bank-Class III Recruitment.
Ex.W4	2005	Advertisement issued by the bank-Class-III Recruitment.
Ex.W5	2009	Advertisement issued by the bank —Officer's cadre.
Ex.W6	12-1-1982	Bank's offer letter — Smt. C.K. Lalitha.

Ex.W7	20-1-1984	Bank's offer letter — Kum S. Mallika.
Ex.W8	23-8-2005	Bank's offer letter — Kum. Deepa Sundaram.
Ex.W9	9-10-2007	Bank's offer letter — Recruitment of Executive.
Ex.W10	4-12-2009	Bank's offer letter — Recruitment of Asstt. Manager
Ex.W11	3-2-2003	Memorandum — Inter-office transfer.
Ex.W12	19-3-1998	Seniority list of Class-III/IV staff.
Ex.W13	31-12-2003	IDBI (Transfer of Undertaking and Repeal) Act, 2003.
Ex.W14	8-12-2003	Extract of the relevant portion of the debate on IDBI (Transfer of undertaking and Repeal) Bill, 2002 in Lok Sabha on 8-12-2003.
Ex.W15	15-12-2003	Extract of the relevant portion of the debate on IDBI (Transfer of undertaking and Repeal) Bill, 2002 in Rajya Sabha on 15-12-2003.
Ex.W16	19-12-2009	Calling Attention Motion in Lok Sabha on 19-12-2006 - Text on the debate.
Ex.W17	25-2-2009	Reply to Unstarred Question No. 672 by Hon'ble Ministry of State for Finance in Lok Sabha on 25-2-2009.
Ex.W18	05-3-2004	Minutes of the Bi-partite meeting held on 5-3-2004.
Ex.W19	21-9-2004	IDBI Management's letter dated 21-9-2004.
Ex.W20	26-4-1995	Extract of provisions contained in Para-2(d) of Part-I, Section-B of the Bipartite Settlement dated 26-4-1985 on Promotion Avenues.
Ex.W21	16-8-2005	Bipartite Agreement signed by IDBI and AIIDBEA on August 16, 2005.

On the Management side:

Ex. No.	Date	Description
	Nil	

नई दिल्ली, 3 फरवरी, 2010

का.आ. 611.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय I, दिल्ली के पंचाट (संदर्भ संख्या 49/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-12012/54/2002-आईआर (बी-II)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 611.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 49/2002) of the Central Government Industrial Tribunal/Labour Court-I, Delhi now as shown in the Annexure, in the Industrial dispute between the employees in relation to the management of Punjab and Sind Bank and their workman, which was received by the Central Government on 2-2-2010.

[No. L-12012/54/2002-IR(B-II)]

U. S. PANDEY, Desk Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, KARKARDOOMA COURT
COMPLEX DELHI**

I. D. No. 49/2002

Shri Ramesh Parkash
S/o Shri Data Ram,
R/o N-18, Punjabi Basti,
Aruna Nagar, Majnu Ka Tila,
Delhi

...Workman

Versus

The Manager,
Punjab & Sind Bank,
Bank House,
21, Rajendera Place,
New Delhi.

...Management

AWARD

Ramesh Prakash was employed by Punjab & Sind Bank at its Naya Bazar branch to carry out jobs of casual nature. His services were allegedly dispensed with by the bank on 20-11-2000. He raised an industrial dispute before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order L-12012/54/2002-IR(B-2), New Delhi dated 7-7-2002, with the following terms:

“Whether the management of Punjab & Sind Bank in stopping Shri Ramesh Prakash, Casual Peon from service and denying reinstatement in service is just,

fair and legal? If not, what relief the concerned workman is entitled and from what date?”

2. Claim statement was filed by the workman, pleading therein that he joined services with the management bank as peon on 15-6-88, at its Naya Bazar Branch, New Delhi. He worked at Naya Bazar and Safdarjung Enclave branch of the bank. Lastly he was serving the bank at its Naya Bazar Branch, when his services were dispensed with. He continuously served the bank for more than 12 years. His last drawn wages were Rs. 1720 PM. Facilities such as bonus, provident fund, earned leave, holidays etc. were denied to him. His services were terminated on 20-11-2000 in violation of the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947 (here in after referred to as the Act). No notice or pay in lieu thereof was given to him. His services were dispensed with without any domestic enquiry and in an illegal manner. Termination of his services amounts to retrenchment. He projects that he is unemployed since the date of his termination. He seeks reinstatement in service with continuity and full back wages.

3. Opportunities were given to the management to file its written statement. Since the management opted not to file its written statement despite various opportunities, hence defence of the management was struck off, vide order dated 10-12-2003. Workman had examined himself in support of his claim on 10-8-2004. An award dated 29-4-2005 was passed declaring therein that termination of the services of the workman was in violation of the provisions of Section 25-F and 25-G of the Act. He was ordered to be reinstated in the services of the management with full back wages.

4. The award was assailed by the management by way of writ petition before the High Court of Delhi. Vide order dated 8-4-2009, the High Court set aside the award, subject to payment of cost of Rs. 34038/- and permitted the management to file its written statement.

5. Written statement was filed by the management on 8-5-09, wherein it was pleaded that the workman was engaged at Naya Bazar branch of the bank on 21-12-1988 to do job of casual in nature. He worked with the branch at different intervals for 186 days upto 31st of October, 89. Since he was doing the job of casual in nature, he was paid for the work done by him. It has been denied that he was employed as a peon and was being paid wages @ Rs. 1720/- PM. It has been projected that he had illegally removed some documents from the bank, filled in the same at some places and signed it as daftry with a view to create evidence in his favour. The bank claims that it can employ casual workers to perform work of urgent/casual nature, viz shifting of records, getting documents photo copied, shifting of furniture and other casual jobs. The claimant was never recruited by the bank on the post of peon. Mere engagement on a few occasions would not confer any right on him. It has been pleaded that when casual jobs came to an end he was not engaged any further. His non engagement does not amount to retrenchment. No violation of the provisions of Section 25-F and 25-G of the Act was

ever committed. It is pleaded that the workman is not entitled to reinstatement in the services, not to talk of continuity and full back wages.

6. The workman has examined himself in support of his claim. He was cross examined by and on behalf of the management. Shri R. K. Gandhi, Senior Manager tendered his affidavit as evidence on behalf of the management. He was cross examined by and on behalf of the workman. No other witness was examined by either of the parties.

7. Arguments were heard at the bar. Shri Harsh Aggarwal, authorized representative, advanced arguments on behalf of the workman. Shri Rajat Arora, authorized representative, advanced arguments on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

8. Ramesh Parkash had testified that he joined Naya Bazar branch of the bank on 15-6-88. Later on he was transferred to P.F. Department, Safdarjung Enclave Branch of the bank. In October, 99 he was again transferred to Naya Bazar branch of the bank, where he worked upto 20-11-2000. He served the management continuously for a period of approximately 12 years. He used to mark his attendance on voucher register. No appointment letter was issued to him by the bank. Later on the management started issuing appointment letters for a period of 60 days. After a break in his service, another appointment letter was issued to him for a period of another 60 days and so on. Photo copies of those appointment letter are Ex.WW1/1 to Ex.WW1/8. After about 5-6 years of his services, he wrote letter to the management asking for regularisation of his services and payment of wages at par with the regular sub-staff of the bank. Copy of the said letter is Ex.WW1/9. Shri G. S. Rekhi, Branch Manager of the bank, wrote a letter on 22-7-97, wherein he admitted that he (witness) was working with the management since June, 88. It was also mentioned therein that he, the (witness) was being paid in different names while being in service of the management, copy of the said letter is Ex.WW1/10. Various letters were written by the bank, copies of which are Ex.WW1/14 to Ex.WW1/16. Those letters were responded to by the Senior Manager, vide letter dated 13th of October, 90, which is Ex.WW1/17. Another letter written by Chief Manager is Ex.WW1/18. Letters Ex.WW1/19 and Ex.WW1/20 were written by the officers of the management in that regard.

9. He builds his case brick by brick deposing that he used to bind vouchers and make entries in voucher register in that regard. He made entries in voucher register from 14-12-98 to February, 99. Photo copies of entries in that register are Ex.WW1/21 and Ex.WW1/22. Photo copies of voucher register for the period March, 92 are Ex.WW1/23 and Ex.WW1/24. Photo copy of the register for the month of August, 92 is Ex.WW1/25. Photo copies of the voucher register are Ex.WW1/26 to Ex.WW1/96. He used to mark his attendance in register, photo copy of which record are Ex.WW1/97 to Ex.WW1/104. He was paid wages on salary register, copy of which are Ex.WW1/105 to Ex.WW1/120.

He was paid on vouchers also, photo copy of which vouchers are Ex.WW1/121 to Ex.WW1/165. He was paid wages through cheques also, photo copies of those cheques are Ex.WW1/166 to Ex.WW1/171. Many a times he was paid in different names, such as Mohan Lal and Babu Ram. No person with the name of Mohan Lal and Babu Ram ever worked with the management bank. Those were fictitious names given by the management, with a view to show that some other person was engaged in his place. He was paid wages in the name of Ram Charan and Rakesh also.

10. On 22-11-2000 he reached office late. Shri Madan, Branch Manager ordered him not to report for duty thereafter. He had not given any chance of complaint to the management. No departmental action was initiated against him. At the time of termination of his services notice pay and retrenchment compensation was not paid. Since the date of his termination he is unemployed. During the course of his cross examination he admits that when he joined the services of the management bank, he had not gone through any selection process. He admits that vouchers, on the strength of which he was paid his wages, were debited to general charges account. He denied that he had not worked continuously for a period of 240 days in any calendar year from December, 1988 till October, 2000.

11. Shri R. K. Gandhi swears in his affidavit that Ramesh Parkash worked with the management for a period of 186 days from 12-12-88 to 31-10-89. He projects that engagement of casual worker for work of urgent nature is permissible under the provisions of bipartite settlement and awards signed by the management and the workers union. The claimant was engaged for temporary/casual nature of job, which would not entitle him for reinstatement in service. Since the claimant was doing job of casual in nature and paid for the work done by him, he is not entitled to claim reinstatement in service. According to him the claimant had obtained certain photo copies of the record which were later on fabricated by him. The claimant had not worked continuously with the management as claimed by him in his testimony. He presents that the claim put forward by the workman is not maintainable, since his services were not taken in pursuance of the recruitment rules.

12. When evidence of the workman is appreciated it came to light that documents Ex.WW1/1 to Ex.WW1/8 are the appointment letters issued to him. When Ex.WW1/1 is considered, it came to light that Zonal Office wrote to the Naya Bazar branch of the bank permitting them to engage Ramesh Parkash as a temporary peon for two months. It is clearly detailed therein that after completion of two months he should be relieved from duties. It was commanded that no temporary peon was to be engaged without prior permission of the Zonal Office. Again on 27-2-89 Branch Manager requested Assistant General Manager of the bank to accord sanction for appointment of Ramesh Kumar as temporary peon for a period of two months. It has been detailed in letter Ex.WW1/2 that Ramesh Kumar had worked in the said branch from 20-12-88 to 20-2-89. Ex.WW1/3 was issued on 19-4-89, on the strength of which Ramesh Kumar

was appointed as temporary peon for a period of two months. Ex.WW1/4 is a letter written by the branch manager to the Assistant General Manager requesting for permission to appoint Ramesh Parkash as a temporary peon since his past work w.e.f. 20-12-88 to 20-2-79, 24-4-79 to 26-6-79 was found satisfactory. Ex.WW1/5 is the appointment letter issued to the claimant on 21-8-89, on the strength of which he was appointed as a temporary peon for a period two months. Ex.WW1/6 was the letter written by the branch manager to Assistant General Manager requesting him to grant permission for appointment of Ramesh Parkash as a temporary peon. Ex.WW1/7 is a request made by the Branch manager to Regional manager for absorption of Ramesh Parkash in the service of the bank. Ex.WW1/8 is again a request made by the branch manager for absorption of Ramesh Kumar in the service of the bank. Ex.WW1/9 is a letter written by the claimant to Assistant General Manager seeking extension of period of his appointment. Ex.WW1/17 is the letter written by the Sr. Manager to the Branch Manager wherein it has been emphasized that recommendations made by the Branch Manager for regularization of Ramesh Parkash cannot be acceded to. Besides the aforesaid documents the claimant has also proved copies of certain salary bills.

13. When the aforesaid documents viz his applications for appointment, letters written by the branch manager to AGM, appointment letters and letters written by the Assistant General Manager to Branch Manager, G forms and copies of salary bills are closely perused, it came to light that Ramesh Kumar served with the bank from 20-12-88 till 31-12-88 and then upto 20-2-89 to 24-10-89. He served for 11 days in the year 1988, 25 days in January, 89, 17 days in February, 89, 26 days in March, 89, 7 days in April, 89, 25 days in May, 89, 22 days in June, 89, 6 days in August 89, 25 days in September, 89 and 21 days in October, 89. In all he served the bank for 185 days from 20-12-1988 till Oct., 1989. As is evident Ramesh Parkash served for 185 days in all with the bank. His services were taken over for a specific period, which came to an end when it was not further extended. By proof of letters Ex.WW1/6, Ex.WW1/7, Ex.WW1/8, Ex.WW1/9 and Ex.WW1/17, the claimant builds a case that he was appointed by the bank for a specific period and there was someone in the branch who wanted to extend his period of appointment against the direction of senior officers and recruitment rules. The claimant also requested for extension of his period of appointment which request was declined. These facts crystallizes that his services were used till October, 1989 and not thereafter. Various copies of documents are proved by the workman, which run counter to his own admission in Ex.WW1/9 and case projected through the documents, referred above. Documents, which are in contradiction of established case of the workman, are discarded from consideration of his claim.

14. Whether Ramesh Parkash rendered continuous service for a period of one year with the management? For an answer the definition of continuous service provided in Section 25-B of the Act is to be taken into account.

“Continuous Service” has been defined by Section 25B of the Act. Under sub-section (1) of the said Section, “continuous service for a period” may comprise of two period viz.(i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the “continuous service.” Sub-section (2) of the said Section introduces a fiction to the effect that even if a workman is not in “continuous service” within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo (1968 Lab.I.C.1180)* it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the Section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently an enquiry has to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment. As detailed above Ramesh Parkash served the bank for a total period of 185 days. Service for a period of 185 days does not answer the standards of unit of one year, as provided by the fiction enacted by sub-section (2) of Section 25 B of the Act. Therefore it is evident that service rendered by Ramesh Parkash cannot be termed as continuous service for a period of 240 days to answer the unit of one year as provided in Section 25-B of the Act.

15. Services of Ramesh Parkash came to an end when it was not further extended to. Whether action of non extension of period of employment can be said to be a retrenchment within the meaning of the Act. At the cost of repetition, it is said that Ramesh Parkash served the bank till October, 1989. He was engaged by the management on 20-12-1988. His services came to an end on account of non renewal of term of contract of employment. Consequently termination of his service does not amounts to retrenchment within the meaning of Section 2(oo) of the Act.

16. There is other fact of the coin. In *Uma Devi [2006(4) SCC 1]* the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the Court declined the submissions of the workmen to be made permanent on the post which were held by them in temporary or adhoc capacity for a fairly long spell. The Court ruled thus:

“With respect, why should the State be depart from the normal rule and indulg

employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent - the distinction between regularization and making permanent, was not emphasized here-can only encourage the State, the modal employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in *Piara Singh* [1992(4) SCC 118] is to some extent inconsistent with the conclusion, in para 45 of the said judgement therein. With great respect, it appears to us, that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all adhoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent."

17. As emerge over the record claimant was appointed to do casual job, as and when exigency arose. He was not appointed by the bank in pursuance of recruitment rules. Casual engagement at different intervals had been not in consonance with the recruitment process which the management bank was bound to follow. In such a situation he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed on that post, when his appointment to the post could be made only by following a proper procedure of selection. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the state has held out any promise while engaging him either to continue him where he was or to make him permanent.

18. The workman was engaged as a casual worker, as and when there was exigency of work in the bank. When casual job came to an end the workman was not engaged any further. In such a situation a claim cannot be put forward by the workman that dispensation of his services amount to retrenchment. When dispensation of services of the workman does not amount to retrenchment, provisions of Section 25-F and 25-G of the Act would not come to his rescue. The workman cannot claim his reinstatement in the service. In view of the circumstances detailed above, an award is accordingly passed. It be sent to the appropriate government for publication.

Dated: 13-11-09

Dr. R. K. YADAV, Presiding Officer
नई दिल्ली, 3 फरवरी, 2010

का.आ. 612.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 20/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-12011/206/2002-आईआर (बी-II)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 612.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2003) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 2-2-2010.

[No. L-12011/206/2002-IR(B-II)]

U. S. PANDEY, Desk Officer

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : N. K. Purohit, Presiding Officer

I. D. No. 20/2003

Ref. No. L-12011/206/2002-IR(B-II) dated 27-01-2003

BETWEEN

The General Secretary,
Allahabad Bank Staff Asson.
Central Office, 40/26, North Malaka
Allahabad (U.P.)-211001.
(Espousing cause of Shri Ram Lal)

AND

The Regional Manager,
Allahabad Bank,
Regional Office
Gonda (UP)

AWARD

21-01-2010

1. By order No. L-12011/206/2002-IR(B-II) dated : 27-01-2003 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between The General Secretary, Allahabad Bank Staff Asson., Central Office, 40/26, North Malaka, Allahabad (U.P.)-211001 (Espousing cause of Shri Ram Lal) and the Regional Manager, Allahabad Bank, Regional Office, Gonda (UP) for adjudication.

2. The reference under adjudication is :

“Whether the action of the Management of Allahabad Bank in imposing the punishment of withdrawal of special allowance to Shri Ram Lal, Special Assistant w.e.f. 19-12-2001 is legal and justified ? If not, what relief the concerned workman is entitled to?”

3. In brief, the facts of the case are that the workman, Ram Lal while he was employed in Branch Mandi Samiti in Gonda of Allahabad Bank on 18-09-1997 requested for Leave Travel Concession, which was granted after availing LFC. He submitted LFC bill for Rs. 17,553, which showed he had traveled AC 2nd class from Gonda to Bangalore City. Though the workman traveled by 2nd Sleeper he claimed fare of 2nd AC. Accordingly, a charge sheet was served on the workman on 13-10-1999. Shri R.K. Jha was appointed Inquiry Officer and submitted his report dated 14-06-2000. Subsequently, the Disciplinary Authority issued show cause notice dated 03-01-2001 of which reply was filed on 17-07-2001 and after considering his reply, the impugned order dated 19-12-2001 was passed by which Special Allowance of the workman was withdrawn w.e.f. 19-12-2001. The appeal filed against said order was dismissed on 20-03-2002.

4. The union in its statement of claim has questioned the validity of findings of the Inquiry Officer on the grounds that the Inquiry Officer has not considered the details of brief submitted by the workman. He has also failed to consider that there was no gain to the workman in submitting the claim of railway tickets of 2nd AC. The Inquiry Officer has also not considered the letter dated 04-12-1997, Ex-B6; wherein he has stated that he had inadvertently submitted the LFC bill supported with the cancelled ticket. The union has alleged that entire inquiry, proceedings are violative of principles of natural justice and findings of the Inquiry Officer are perverse. The impugned order dated 19-12-2001 has passed without going through the records, facts and circumstances of the case and without considering the reply of the workman on show cause notice and the said order is non-speaking and non-reasoned. The union has further alleged that opposite party No. 3 has not considered the appeal in accordance with the law. No opportunity of hearing has been given to the workman and vide order dated 20-03-2002 the appeal has been rejected without considering the contentions raised by the workman. Accordingly, the union has prayed to set aside the impugned order of penalty order dated 19-12-2001 and appellate order dated 20-03-2002.

5. The Bank management has denied the allegations of the union in its statement of claim and has also denied having received any letter dated 04-12-1997 as alleged by the union. It has been submitted that the Inquiry Officer in his report has duly considered the genuineness of the alleged letter dated 04-12-1997. During the course of inquiry the Inquiry Officer afforded full opportunity to the workman to defend himself and principles of natural justice were

duly followed. Further, contended that in appeal the Appellate Authority had given due consideration to the submissions of the workman and as such does not suffer from any infirmity.

6. The workman's union has filed rejoinder whereby it has only reiterated his averments in the statement of claim and has not introduced any new fact.

7. Following issue was framed on 25-08-2003 on the basis of statement of claim and written statement:

"Whether the inquiry officer conducted the inquiry in utter disregard of principles of natural justice as alleged in the statement of claim?"

8. After hearing the learned representatives of both the sides and perusal of record the then learned Presiding Officer vide order dated 29-09-2004 decided the issue against the workman and the case was fixed for evidence of the workman on 22-07-2005. None appeared on behalf of the workman; therefore, order to proceed ex-parte was passed. It reveals from the proceedings dated 07-11-2005 that the case was fixed for filing affidavit in support of the case of the opposite party; but the learned representative on behalf of the opposite party moved an application, C-25 stating therein that he does not intend to produce any evidence in the case and the case was fixed for arguments.

9. Heard learned representatives of the both the parties and perused all relevant material on record.

10. The learned representative on behalf of the union has contended that though an opportunity of personal hearing was afforded to the workman and his Defence Representative; but the Disciplinary Authority did not pay any heed to the arguments of the defence. The entire proceeding and personal hearing was mere for show and impugned penalty order was passed without giving any reason for disagreement with reply given by the workman against show cause notice. The Appellate Authority has also not considered the issues raised in the appeal and rejected by means of non-speaking and non-reasoned order, therefore, the orders of Disciplinary Authority and Appellate Authority are liable to be set aside. In support of his contentions he has placed reliance on the following case law :

- a. 2005 (25) LCD 1101 Ayodhya Singh vs. Oriental Bank of Commerce.
- b. 2009 (1) SCC (L&S) 398 Roop Singh Negi vs. Punjab National Bank.

11. Per contra, the learned representative on behalf of the opposite parties has urged that after recording findings on preliminary issue vide order dated 07-11-2005 the opposite party has directed to file affidavit but after finding that departmental inquiry was fairly and properly held nothing remained to be done except to hear on the question on the quantum of punishment. In view of the settled law in this regard the opposite party moved an

application to fix date for argument and thereby not calling for filing affidavit in respect of misconduct, therefore, the date for argument on the question of quantum of punishment was fixed impliedly recalling the order to adduce the evidence. He has further urged that jurisdiction of this Tribunal under Section 11A of the I.D. Act to go into quantum of punishment is confined to case of dismissal or removal from service. It is only in cases of discharge or dismissal by way of punishment that this section vests the discretionary jurisdiction in the Tribunal to direct reinstatement with or without any terms of conditions or to vary the punishment as the circumstances of the case may warrant. Therefore, there is no need for the Tribunal to go into the quantum of punishment. He has also submitted that there is no need to give opportunity of personal hearing in appeal. He has further submitted that on merit also the punishment awarded to the workman is commensurate to his guilt. In support of his contentions he has relied on :

- a. 2003 LAB IC 1251 Nagendra Choudhary vs. State Bank of India & others.
- b. 1998 (80) FLR 971 (Patna High Court) Sheojee Singh vs. PO, Labour Court, Dhanbad & another.
- c. 1997 LAB IC 1659 Prabhakar Rai vs. GM, Vijaya Bank & another.
- d. 2004 LAB IC 2123 Gujrat State Road Transport Corporation vs. Ranaji Chaganji Chauhan.

12. I have given my thoughtful consideration on the rival submissions of both the sides and perused relevant record.

13. The learned representative of the union has questioned the validity of the impugned order dated 14-12-2001 of the Disciplinary Authority mainly on the ground that contentions raised by the workman have not been considered by Disciplinary Authority and impugned order is non-speaking and non-reasoned order therefore, liable to be set aside. He has placed reliance on 2005 (23) L&D 1101 & (2000) 1 SCC (L&S) 398 but the facts of the above case laws are distinguishable. In 2005 (23) L&D 1101 no personal hearing was allowed to the petitioner and material witness were not examined evidence was non-existent to arrive at the conclusion of dismissal. The petitioner was denied the opportunity to prove his case effectively. In such circumstances Hon'ble High Court observed that an inference can be drawn that the orders have been passed with pre-determined mind to punish the petitioner ignoring the pleas of the petitioner that no embezzlement was done. The Disciplinary Authority ought to have recorded its own reasons for deciding about the dismissal of the petitioner therein. In (200) 1 SCC (L&S) 398 no witness was examined to prove the evidence collected during the investigation. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance was placed by the Enquiry Officer on the FIR, which could not have been treated as evidence there

was no direct evidence. Even there was no indirect evidence. In such circumstances Hon'ble Apex Court observed that the Enquiry Officer had made up his mind to find him guilty and the Disciplinary Authority and the Appellate Authority should have assigned the reasons in their orders.

14. This legal position is not disputed that orders of the disciplinary authority and appellate authority must be based on recorded reason. In present case it is evident from show cause notice dated 7-3-2001 (12/16) that opportunity was afforded to the workman to submit his representation and personal hearing before the disciplinary authority. It is also evident from the order of the Appellate Authority dated 4-1-2002 (12/28 to 12/30) that the opportunity of hearing was provided to the workman and his defence nominee. Thus, the contention of the workman in his para 23 of the claim that impugned orders have been passed without affording opportunity of personal hearing is not tenable.

15. Upon perusal of the impugned order of the Disciplinary Authority dated 19-12-2001 (12/27), it reveals that the order has been passed after considering the representation given by the workman. Although detailed reasons have not been recorded in the impugned order for disagreeing with the contention raised by the workman against the findings of the Enquiry Officer and Disciplinary Authority have been considered by the Appellate Authority in its impugned order dated 4-1-2002. Upon perusal of the order of the Appellate Authority, it can not be said that it is non-speaking and non-reasoned order and resultantly any prejudice has been cause to be workman.

16. It is well settled legal position that Tribunal would not interfere with the findings recorded by the Disciplinary Authority as well as Appellate Authority as a matter of course. The Tribunal cannot sit in appeal over these findings and assume the role of the Appellate Authority. The preliminary issue has been decided against the workman and it has been found that enquiry has been conducted fairly and properly. As regards quantum of punishment is concerned, it is settled legal position that it can be considered by the Tribunal only in the case of dismissal or removal from service by way of punishment under Section 11 A of the I.D. Act.

17. In view of the above discussions, the action of the management of Allahabad Bank in imposing the punishment of withdrawal of Special Allowance to Sh. Ram Lal, Special Assistant w.e.f. 19-12-2001 is neither illegal nor unjustified. Consequently, the workman is not entitled to any relief.

18. The reference under adjudication is answered accordingly.

19. Award as above.

Lucknow

21-1-2010

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 3 फरवरी, 2010

का. आ. 613.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 2/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-2-2010 को प्राप्त हुआ था।

[सं. एल-12011/49/2005-आईआर(बी-II)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S. O. 613.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/2006) of the Central Government Industrial Tribunal/Labour Court-I, Delhi, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 2-2-2010.

[No. L-12011/49/2005-IR(B-II)]

U. S. PANDEY, Desk Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. I, KARKARDOOMA COURT
COMPLEX, DELHI**

I. D. No. 2/2006

Smt. Jagriti,
Through the General Secretary,
Bank of Baroda Employees' Union,
C/o BOB, 4824/24, Ansari Road,
Daryaganj, New Delhi-110002Workman

Versus

The Dy. General Manager,
Bank of Baroda,
DMR-I, (Northern Zone) 12th Floor,
BOB Building, 16, Sansad Marg,
New Delhi-110001Management

AWARD

Smt. Jagriti was appointed as part time sweeper by the erstwhile Traders Bank Limited in the year 1984. The said bank was amalgamated with the Bank of Baroda in May, 1988. Services of Smt. Jagriti were put at the disposal of the Bank of Baroda. All employees serving in Traders Bank Limited, were absorbed in the service of Bank of

Baroda, except Smt. Jagriti. She is serving Bank of Baroda since then and being paid at half of the wages at minima of the scale, without any increment or other benefits. She claims regularisation of her services. When her request was not conceded to, she raised a dispute before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12011/49/2005-IR(B-II), New Delhi, dated 31st of January, 2006, with following terms :—

“Whether the claim of the Bank of Baroda Employees' Union that Smt. Jagriti has been engaged as a temporary Safai Karamchhari on half of the scale wages by the management of Bank of Baroda from May, 1988? If so whether the claim of the union for regularisation of service by the bank management is legal and justified and what relief the disputant concerned entitled to?”

2. Claim statement was filed by Smt. Jagriti pleading therein that she was appointed as a part time sweeper by the erstwhile Traders Bank Limited at its Bharat Nagar Branch, Delhi, in the year 1984. Subsequently, the said bank merged with Bank of Baroda in 1988. All employees of Traders Bank Limited were absorbed in the services of Bank of Baroda in 1988, including her. She has been working in Bank of Baroda from last 20 years against a sanctioned post. In gross violation of statutory provisions and bipartite settlements bank has been paying her one half of the scale wages at minima of scale, without any annual increment. She is also not being granted leave, medical aid, provident fund, leave fair concession and other benefits admissible under the law and bipartite settlements, applicable to the banking industry. The management bank is instrumentality of the State under Article 12 of the Constitution of India and expected to function as a model employer. The acts of the bank by way of paying her half of the scale wages without any increment and other facilities amount to unfair labour practice. It has been claimed that she may be granted status of a regular part time employee and management bank may be directed to pay her arrears of increments, provident fund, leave fair concession etc. with interest at market rate.

3. Contest was given to the claim statement filed by the claimant, leading that the Government has not referred real controversy for adjudication. The term of reference drawn by the Government are utterly vague and as such no industrial dispute has been referred for adjudication. A part time employee as defined by Sastry Award, is different and distinct than a regular full time employee. A part time employee does not work for normal working hours for which a regular employee is supposed to render services. Part time employees, who were members of subordinate staff, are to be paid in terms of bipartite settlement dated 19th of October, 66. In case they work upto 3 hours a week they are to be paid at the discretion of the bank. If they work for more than 3 hours but upto 6 hours per week they are

to be paid at Rs. 740 p.m. If a part time employee work for more than 6 hours but up to 12 hours per week he is to be paid 1/3rd of the scale wages. In the eventuality of his work hours happens to be from 13 hours to 19 hours per week he is to be paid half of the scale wages. When working hours of a part time employee happens to be more than 19 hours but upto 29 hours per week he is to be paid 3/4th of the scale wages and in case his working hours happens to be beyond 29 hours per week, he is to be paid full scale wages. In pursuance of the said bipartite settlement, the bank employ water supplier and sweeper on part time basis in comparatively smaller branches for welfare of weaker sections. In view of the law laid down by the apex Court in Uma Devi's case, the reference is to be answered in favour of the management. It has been claimed that appointment in sub staff cadre had to be made by an authority competent to make such appointment subject to fulfilment of eligibility criteria. In normal course appointment, of sub staff cadre is done when persons are sponsored by the Employment Exchange in that behalf. If no suitable candidate is available, or a certificate is issued by the Employment Exchange in that behalf, recruitment from other sources are to be made. In case recruitment made is in violation of the rules, claim of regularisation of services cannot be entertained. It has been pleaded that the bank had no knowledge that Smt. Jagriti was appointed by the erstwhile Traders bank Limited in 1984. However, it has not been denied that the said bank amalgamated with the Bank of Baroda in 1988. The management feigned ignorance that Smt. Jagriti was absorbed by the bank on amalgamation of Traders Bank Limited in 1988. It has been pleaded that claim of Smt. Jagriti that she had been working in the bank for last more than 20 years has no substance. It has been pleaded that if Smt. Jagriti has ever been engaged as daily wage or part time sweeper, she has been paid in accordance with the bipartite settlement. It has been denied that the bank had adopted unfair labour practice of paying less wages and denying other benefits to Smt. Jagriti. It has been claimed that Smt. Jagriti was never recruited and employed by the bank, hence she is not entitled to any relief.

4. Shri C.S.Dahiya was examined on behalf of the workman. Shri A.Shankar Narainan was examined on behalf of the management. No other witness was examined by either of the parties.

5. Arguments were heard at the bar. Shri C.S.Dahiya, authorized representative, advanced arguments on behalf of the workman. Shri T.C.Gupta, authorized representative, raised submissions on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

6. First and foremost contention advanced by Shri Gupta is that the reference made by the appropriate

Government is incompetent. He presents that first limb of the reference gives a proposition of fact which is not disputed by the management. According to him the second limb of the reference raises a proposition as to whether the claim of the union for regularization of services by the bank management is legal and justified and what relief the disputant concerned is entitled to. According to Shri Gupta neither name of the claimant is there in the second limb of the reference nor it has been mentioned that the disputant bank seeks any relief against the claimant union. He argued that the second limb of the reference is also absurd. Contra to it Shri Dahiya presents that when proposition in first limb of the reference is not disputed by the management, it creeps over the record that the union seeks regularisation of service of Smt. Jagriti. According to him, admission of facts gives appropriate meaning to the second limb of the reference. He argued that as far as second question posed in second limb of the reference is concerned, the appropriate Government referred Smt. Jagriti as the disputant and raised a proposition as to what relief she is entitled to.

7. For referring an industrial dispute for adjudication the appropriate Government should satisfy itself, on the facts and circumstances brought to its notice, in its subjective opinion that an industrial dispute exists or is apprehended. The factual existence of a dispute or its apprehension and expediency of making a reference are matters entirely for the Government to decide. An order making a reference is an administrative act and the fact that the Government has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The adequacy or sufficiency of material on which opinion was formed is beyond the pale of judicial scrutiny.

8. The scope of a reference is a matter of considerable importance. Although it is open to an industrial adjudicator to devise his own procedure, but he has to confine his adjudication to the points of dispute specified in the order of reference and to matters incidental thereto. Before embarking on adjudication, therefore, the adjudicator has to determine the scope of the order of reference. Hence, the question of the scope and construction of the order of reference becomes relevant. The construction of the order of reference will, in all probability, be easy or difficult, according as the document, has been skillfully or carelessly drawn. In India Paper Pulp Company limited [1949 (1) LLJ 258] the Federal Court was concerned with a proposition as to whether the order of reference can be construed by an adjudicator. Chief Justice Kania, speaking for the Court, said that not infrequently, the orders of reference are "far from satisfactory and are not carefully drafted". It is, therefore, desirable that the appropriate Government should frame such orders carefully and the question which are intended to be tried by the adjudicator should be so worded as to leave no scope for ambiguity or controversy.

Same proposition of law was laid by Apex Court in Delhi Cloth and General Mills Limited [1967 (I) LLJ 423]. Inaccuracy of language employed in the order of reference, however, does not always make any difference to the jurisdiction of the Tribunal to proceed with the reference and adjudicate upon it, as the Tribunal can interpret and find out the real meaning of the order of reference, as it stands. A duty is cast upon the Tribunal to make an attempt to construe order of reference to find out as to what was the real dispute which was referred to it and to decide it and not to throw it out on a mere technicality. Law to this effect was laid by the Apex Court in Express Newspaper Limited [1962 (II) LLJ 227]. Reference can also be made to the precedent in Management of Barpukhurie Tea Estate [1978 (I) LLJ 558] and Minimax Limited [1968 (I) LLJ 369].

9. When phraseology of order of reference is inelegant, the Tribunal should look to the substance rather than to the form of the order of reference. In construing terms of the order of reference and determining the scope and nature of the points referred, the Tribunal has to look into the order of reference itself. Therefore, it is clear that where the order of reference is vague or cryptic, the tribunal may cull out the real question by construing its phraseology. In C. P. Sarathy [1953 (I) LLJ 174] the Apex Court ruled that when order of reference is not clear the Tribunal may crystallise the terms of reference from the statements of the respective cases of the parties. In Delhi Cloth and General Mills Limited (supra) the Apex Court candidly laid that "the Tribunal must, in any event, look to the pleadings of the parties to find the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out there from the various points about which the parties were at variance, leading to the trouble". From above proposition of law laid it is evident that the Tribunal is competent to construe the terms of reference, when it is vaguely worded and can ascertain the real dispute between the parties even from its pleadings.

10. As detailed above the first limb of the order of reference is not clearly worded. For the sake of convenience it is extracted thus.

"Whether the claim of the Bank of Baroda Employees, Union that Smt. Jagriti has been engaged as a temporary Safai Karamchari on half of the scale wages by the management of Bank of Baroda from May, 1988?"

This proposition is incomplete. When read carefully the words "is correct" are missing. Those words are to be read alongwith the first limb of order of reference. Therefore, the first limb of the order of reference is to be read as follows :—

"Whether the claim of the Bank of Baroda Employees' Union that Smt. Jagriti has been engaged as a temporary Safai Karamchari on half of the scale wages by the management of Bank of Baroda from May, 88 is correct?"

The proposition of fact, referred above, is not disputed by the management, Shri A. Shankar Narainan, testified, that Smt. Jagriti is doing sweeping in Bharat Nagar Branch of the bank since the date of amalgamation of Traders Bank Limited with the Bank of Baroda. He deposed further that Traders Bank Limited has amalgamated with the Bank of Baroda in May, 1988. Therefore, out of facts testified by Shri A. Shankar Narainan it emerges over the record that the bank nowhere disputes that Smt. Jagriti was engaged as a temporary safai karamchari by the Bank of Baroda on half of the scale wages since May, 1988. When this proposition of fact is not in dispute, the construction of first limb of the reference, as referred above, was expedient and it was so done accordingly.

11. On construction of first limb of order of reference, as referred above, the second limb of reference becomes meaningful. The appropriate Government had referred a proposition of fact in second limb to the effect that "if so whether the claim of the union for regularization of service by the bank management is legal and justified and what relief the disputant concerned entitled to?". The words "of Smt. Jagriti" and "claimant" in place of "disputant" are expedient to be read in the order of reference to make the proposition meaningful. In claim statement the union seeks regularization of the services of Smt. Jagriti and management disputes that claim. Therefore, it is the management who is disputant of the claim put forward by the Bank of Baroda Employees Union. Management had not sought any redressal of its grievance nor such grievances were addressed to this Tribunal for adjudication. Therefore, the word "disputant" used in the second limb of the reference is to be read as the "claimant union". This construction would put the order of reference in understandable and meaningful form. Consequently by putting the construction referred above the Tribunal can proceed for adjudication of the dispute referred to by the appropriate Government. Contention raised by the management that no meaningful dispute has been addressed to this Tribunal, is uncalled for.

12. Shri C.S. Dahiya deposed that being General Secretary of the Bank of Baroda Employees Union he is authorized representative of the workman. Service conditions of employees of Bank of Baroda are governed by Sastry Award, Desai Award and industrywise Bipartite Settlements. Smt. Jagriti was recruited as sweeper by the then Traders Bank Limited in April, 1984. In May, 1988 the Traders Bank Limited was amalgamated with the Bank of Baroda. Smt. Jagriti was absorbed in Bank of Baroda, besides other employees of the Traders Bank Limited. She is serving Bank of Baroda at its Bharat Nagar Branch, Delhi till date. Smt. Jagriti is being paid half of the scale wage at minima of the scale. No increment and other allowances available to an employee of the bank are paid to her. As per Bipartite Settlement, bank can engage temporary employees for a period of three months, during

which period bank will make arrangement for recruitment of an employee on that post in substantive capacity. Smt. Jagriti has been working as part time employee, since the date of her engagement. Permanent vacancy exists against the post on which Smt. Jagriti is working.

13. In November, 2002 as well as November, 2007 Smt. Jagriti was paid arrears of wages, at initial stage of the scale, when salaries of employees of the bank were enhanced in pursuance of Bipartite Settlements, deposes Shri Dahia. She had not been regularized by the bank till date. Bank of Baroda is a nationalized bank and can not exploit the workman. Smt. Jagriti claims regularization of her job. In 2004 she raised a demand before the management seeking her regularization. When her request was not conceded to, she approached the union. Union raised a dispute before the Conciliation Officer on 12-7-2004, copy of which is Ex. WW/1. When conciliation proceedings failed, the dispute was referred to this Tribunal. The dispute was properly espoused by the union. Smt. Jagriti filed a claim statement, which is Ex. WW/2.

14. During the course of his cross examination, Shri Dahiya unfolds that Smt. Jagriti became member of the bank of Baroda Employees Union in 1988. He asserts that during the course of conciliation proceedings the bank had not disputed that Smt. Jagriti was employed by the Traders Bank Limited and on amalgamation of the said bank with the Bank of Baroda, she was absorbed by the management bank. All employees of the Traders Bank Limited, except Jagriti, Bhagwanti and Jagriti, were regularized in the services of the management bank. He admits that whenever regular employee is appointed by the bank an appointment letter is issued to him. He further admits that no appointment letter was issued to Smt. Jagriti by the traders Bank Limited. He explained that she was a temporary employee there. He admits that no letter was issued to Smt. Jagriti, putting her on probation.

15. Shri A. Shankar Narainan testified that when The Traders Bank Limited was amalgamated with the Bank of Baroda in May, 88, a list of employees of the Traders Bank Limited was supplied to the Bank of Baroda. Those employees were taken on job and were given salary according to their status as per scales applicable to the employees of the Bank of Baroda. Jagriti's name was not in the list, referred above. She was never employed by the Bank of Baroda in any of its branch. He could not affirm or deny whether arrears were paid to Smt. Jagriti on revision of pay of the bank employees. However, he projects that there is no employer and employee relationship between the bank and Smt. Jagriti.

16. When facts testified by Shri C. S. Dahiya and Shri A. Shankar Narainan are appreciated, it came to light that Smt. Jagriti was initially employed by the Traders Bank Limited and on amalgamation of the said bank with the Bank of Baroda her services were absorbed by the

management bank. Though her name was not there in the list of employees of the erstwhile Traders Bank Limited, yet she is working with the management till date since the date of amalgamation of that bank with the Bank of Baroda. It is not a disputed fact that she is working with the bank and is being paid half of the scale wages. Arrears were paid to her when wages of the bank employees were revised, which fact is suggestive that she works as temporary employee with the bank.

17. Question for consideration comes as to whether services of Smt. Jagriti can be regularized. As claimed by the management she was a part time daily rated employee. In *Silver Jubilee Tailoring House* (1993(II) LLJ 495), the Apex Court ruled that tailor working on part time basis in tailoring shop fall within the definition of workman. Following that decision, a Division Bench of Bombay High Court in *Raja Ram Rokare* (1977 Lab. I. C. 1594) announced that part time carpenters and polishman engaged in the factory were workman. Same view was taken by Allahabad High Court in *P. N. Gulati* (1977 Lab. I. C. 1088) wherein it was held that doctor employed in the industry for rendering medical aid to its employees on part time basis was a workman. In *Govind Bhai Kena Bhai Maru* (1988 Lab I. C. 505) it was laid that the definition of the workman is sufficiently wide to include a "part time employee" within its sweep. Therefore, Smt. Jagriti being a part time employee falls within the definition of a workman.

18. An industrial workman is entitled to job security, permanency of tenure unless he is appointed in temporary or casual capacity. Where employment is of temporary nature it is normally function of the employer as to who should be made permanent and who should not be. In *Jaswant Sugar Mills* (1961 (1) LLJ 649) the Apex Court considered the definition of "permanent workman", "seasonal workman" and "temporary workman" in the standing order together and observed that a "seasonal workman" is engaged in a job which lasts during a particular season only, while a temporary workman may be engaged either in work of temporary or casual nature or temporarily for work of permanent nature, but a permanent workman is one who is engaged in work of permanent nature only. The distinction between a permanent workman engaged on a work of permanent nature and a temporary workman engaged on work of permanent nature is, in fact, that a temporary workman is engaged to fill in temporary needs of extra hands of permanent jobs. Thus when a workman is engaged on a work of permanent nature which lasts throughout the years, it is expected "he would perform the work permanently unless he has been engaged to fill in a temporary need". In other words, a workman is entitled to expect permanency of his services.

19. Permanency of tenure can be claimed only by such employees as have to work for all the working hours

on all the working days and cannot be claimed by such workmen who are employed only on part time work. In *Gramophone Company Limited* [1964 (II) L.J. 131] the manpower working in that company were required there only for recording of songs. The Apex Court ruled that they were not permanent workmen. In *Hindustan Aeronautic Limited* [(1975 (II) L.J. 336] some casual employees working in the canteen were ordered to be treated as probationers from a particular date and appointed in permanent vacancies without going into the question as to whether more permanent workmen were needed in the canteen or not, over and above the existing strength. There were no permanent vacancy in the canteen nor the Tribunal directed to create new posts. The Apex Court ruled that the Tribunal was not justified in making these directions.

20. In *Uma Devi* [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the person who got employment without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the post which was held by them in temporary or ad hoc capacity for a fairly long spell. The Court ruled thus:

“With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent—the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the modal employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in *Piara Singh* [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgment therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent.”

21. Workman can be made permanent only against permanent vacancies and not otherwise. As testified by Shri A. Shankar Narainan. Smt. Jagriti renders 19 hours service in a week. He presents that as per Bipartite Settlement she is being paid half of the scale at minima. Shri Dahia nowhere disputes that Smt. Jagriti is being paid in accordance with Bipartite Settlement dated 19-10-66.

Therefore, it is emerging over the record that Smt. Jagriti is a part-time employees who is being paid in accordance with Bipartite Settlements. However, in subsequent sections of the judgment in *Uma Devi* (supra) the Apex Court commanded the state to take steps to regularize as a one time measure, the services of the employees appointed irregularly, who have worked for ten years or more in duly sanctioned posts. For the sake of convenience it would be expedient to reproduce the missives of the Apex Court, which are extracted thus:

“One aspect need to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S. V. Narayanappa, R. N. Nanjundappa* and *B. N. Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without intervention of orders of the Courts or of Tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts, but not under cover of orders of the Courts or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts, that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub-judice, need not be reopened posted on this judgement, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

22. In view of the law laid by the Apex Court, in *Uma Devi* (supra) it is evident that claim of regularisation of the services of the employees, who have been appointed in an illegal manner, cannot be considered by the State, its instrumentalities or the Courts, to frustrate the claim of the persons who are ready to compete for those posts. It is well settled proposition of law that the State cannot make appointments to a post in violation of its policies of recruitment. However, the persons who are working on the posts for more than ten years or more, against which posts they were appointed in regular manner, the State is under a command to take steps for their regularization, as one time measures.

23. Now it would be considered whether claim of Smt. Jagriti for regularisation of services can be considered. To rebut her claim Shri Gupta has relied on precedents in *Delhi Jal Board* [2006 III AD (Delhi) 683], *M. P. State Agro*

Industries Development Corpn. Ltd. (2006) 2 S.C.C. 716), Airport Authority of India [2006 III AD (Delhi) 701], R. N. Nanjundappa [1972(1) LLJ 565] and Amreli Municipality [(2004) 107 FJR 108] and argued that regularization is something different than making an employee permanent on a post. In view of the law laid by the Apex Court in Uma Devi reliance of Shri Gupta on the above precedents happens to be nothing but quibbles of advocacy. In Uma Devi the Apex Court had made it clear that regularization of services or making one permanent on a post has one and the same meaning.

24. Smt. Jagriti was employed as a safai karamchari by the Traders Bank Limited in 1984. When Traders Bank Limited was amalgamated with the Bank of Baroda in May, 1988 her services were taken over by the Bank of Baroda. Since May, 1988 till date, Smt. Jagriti has been working with the Bank of Baroda. Therefore, it is emerging that service of Smt. Jagriti were taken over by the Bank of Baroda on amalgamation of the Traders Bank Limited with it in May, 1988. Her name did not find mention in the list of the employees of Traders Bank Limited, which was submitted to the Bank of Baroda on amalgamation. Therefore, it is emerging over the record that Smt. Jagriti was taken over by the Bank of Baroda in May, 1988 in an irregular manner and not in an illegal manner. Her case is covered by the directions given by the Apex Court for taking one time measure to regularize the service of an employee, working for ten years or more against a sanctioned post.

25. Even otherwise the Government of India issued an approach paper on 16-8-90, laying down guidelines for all public sector banks, for recruitment as well as absorption of temporary employees. Guidelines laid in the approach paper are not a matter of dispute. It has been laid in clause (a) of paragraph 6 of the approach paper that cases of temporary employees, who have put in not less than 240 days of temporary service in 12 consecutive months and are entitled to the benefits of Section 25 F of the I.D. Act, may be decided by entering into a settlement with the representative union. It may be pointed out that in order to have a binding effect of the settlement on the other parties, who are not parties to it, it will be necessary that the settlement should be arrived at in the course of the conciliation proceedings. Talks of settlement can be initiated by the management of each bank with its representative union during the conciliation proceedings and may be given effect to in terms of the provisions of the I.D. Act.

26. Modalities regarding test and or interview etc. for absorption of temporary employees in subordinate cadre were left to be finalized by the respective banks in their own directions, keeping in view the main criteria proposed in the approach paper. It was further pointed out therein that eligibility of a candidate was to be considered only on the date he was first engaged as

temporary employee. Only temporary employees who had put in minimum temporary service of 90 days or more after the cut off date, that is, 1-1-82 were to be eligible for consideration under the scheme. Vacancies for absorbing the temporary employees who were to be finally approved, were to be identified by the management within the norms prescribed by the Ministry of Finance and the test/interview was to be conducted for filling up the vacancies allotted for a particular cadre in the year in which test/interview was being conducted. The above recruitments were to be subject to statutory requirements regarding reservation for S.C./ST, physically handicapped and ex-servicemen. The aforesaid approach paper provides one time measure, to be adopted by all public sector banks, to regularize the services of temporary employees.

27. Shri Gupta does not dispute that the said approach paper was followed by the Bank of Baroda and steps were taken to regularize all temporary employees, in pursuance of the directions given therein. He could not present any explanation as to why services of the claimant were not regularized, who was working with the management bank since May, 1988. It is not the case of the management that Smt. Jagriti's case does not fall within all four corners of the guidelines laid in the said approach paper or settlement arrived at with the representative union. Therefore, it is evident that despite guidelines laid in the approach paper dated 16-8-90, issued by the Government of India, as well as law laid by the Apex Court in Uma Devi (supra) the management had not opted to accord rights available to the claimant.

28. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, Government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover, (a) initial appointments; (b) promotions, (c) termination of employment and (d) matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

29. When case of Smt. Jagriti is considered in the light of the fundamental rights guaranteed by Article 14 and 16 of the Constitution, it is evident that she has been discriminated by the management bank, who is State within the meaning of Article 12 of the Constitution. When temporary employees were considered for regularization in view of guidelines laid in the approach paper dated 16-8-90, the management bank cannot be allowed to discriminate Smt. Jagriti in that matter. Therefore, it is evident that the action of the management bank in not considering her for regularizing her services cannot be held to be legal and justified.

30. Smt. Jagriti has a right to be considered for the purposes of regularization in pursuance of guidelines laid down in the approach paper as well as by the Apex Court in Uma Devi (supra). The management bank is, therefore, commanded to consider the case of Jagriti for regularization of her services, in view of the missives referred above and accord status of regular employee, if she is found eligible for the same, on the date when persons of her category were considered and regularized. An Award is accordingly passed. It is sent to the appropriate Government of publication.

Dated: 15-1-2010

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 3 फरवरी, 2010

का. आ. 614.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 61/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/134/2007-आईआर(सीएम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S. O. 614.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 61/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of M/s. Eastern Coal fields Limited and their workmen, which was received by the Central Government on 03-02-2010.

[No. L-12012/134/2007-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Reference No. : 61/ITC/2007

Management of J.K. Nagar Colliery of E.C.L.

Vrs.

General Secretary, Koyla Mazdoor Congress.

Settlement in Lok Adalat

Held on 29th August at Kunustoria Guest House.

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat.

The Terms of agreement to form part of the Award.

MANORANJAN PATTAIK, Presiding Officer

FORM—"II"

(See Rule 58 under Industrial Dispute (Central) Rules, 1957)

Memorandum of Settlement arrived at between

Sri Fulchand Rajbhar, Ex. Ug. Loader U. M.

No. 374887 of J. K. Nagar ® Mines

Representing the Management Person Concerned

- | | |
|---|--|
| 1. Sri S. Saran
Chief General Manager, Satgram
Area | 1. Sri Fulchand Rajbhar
Ex. Ug. Loader,
JK Nagar |
| 2. Sri J. S. Sayare, Dy. C.P.M.
Satgram Area | |
| 3. Sri U. Aich, P.M. Satgram Area | |
| 4. Sri B. Bhowmik, Dy. P.M.
Nimcha Colliery. | |

Short Recital of the Case :

1. Sri Fulchand Rajbhar, Ex. Ug. Loader U. M. No. 374887 of J.K. Nagar ® Mines was charge sheeted for absents from duty from 10-03-2005. A departmental enquiry was conducted, wherein the charges were proved and accordingly Sri Rajbhar was terminated from his services on dismissal vide letter No. SAT/GM./Per/Termination/05/4486/dt. 21/23-9-2005.
2. Sri Fulchand Rajbhar, Ex. Ug. Loader U.M. No. 374887 of J.K. Nagar ® Mines had submitted mercy application for his re-instatement in service and the Competent

Authority, ECL has been pleased to approve re-instatement of his service on revocation of his aforesaid order of dismissal without payment of any back wages subject to ascertaining his medical fitness as communicated by Dy. C. P.M. (L & IR), ECL HQ vide letter Ref. No. ECL.(CMD)/C-6 (D)/L&IR/09/DA/897 dated 14-21-8-2009.

TERMS AND CONDITION OF SETTLEMENT

1. Agreed that Sri Fulchand Rajbhar, Ex. U.G. Loader, U.M. 374887 of J.K. Nagar ® Mines will be re-instated in service in his previous designation as he has been declared **MEDICALLY FIT FOR UG' JOB** by the competent medical board, Satgram Area and to be posted in any of the colliery under Satgram Area where there is requirement.
2. Agreed that this settlement resolves the dispute fully and finally. Neither the workman concerned nor his Union shall raise any dispute in any forum/court of law after this settlement in this regard. Even he has assured for unconditional withdrawal of his CGIT Case No. 61/2007 before his re-instatement. It is also agreed that the person concerned will also submit a "NO DISPUTE" certificate in this regard to the management. Process for his re-instatement in service will be made accordingly.
3. Colliery Authority have confirmed that Sri Fulchand Rajbhar has not yet drawn his gratuity from the company but drawn his CMPF accumulations.
4. Agreed that the Ex. employee concerned will not be entitled for any back wages for the period of his idleness and the period of his absence / idleness shall be treated as DIES- NON.
5. Agree that the Ex. employee will be allowed the benefit of continuity of service for the period of his idleness for

the purpose of computation of his final gratuity payment only.

6. Agreed that the Ex. employee on such re-instatement in service shall be on probation for a minimum period of ONE (1) Year and the same will be confirmed only on receipt of satisfactory performance certification on expiry of probation period by CGM/GM on the area.
7. Agreed that instant settlement has been arrived with the free consent of the Ex-workman concerned as he has found the settlement to be reasonable, just and free from any kind of influence.
8. Agreed that a copy of this memorandum of settlement shall be sent to CGIT/Asansol and the Regional Labour Commissioner (C), Asansol, for registration as per I.D. Act, 1947.
9. The workman will submit his undertaking that in future he will not commit the misconduct of unauthorised and/or habitual absence from duty.
10. The Agreement is signed by both the parties on 18-9-2009.

Management Representatives	Ex.-workman Concerned
1. (S. Saran) Chief General Manager Satgram Area	1. (Fulchand Rajbhar) Ex. Ug Loader/Nimcha Colliery
2. (J.S. Sayare) Dy. Chief Personnel Manager Satgram Area	
3. (U. Aich) Personnel Manager Satgram Area	
4. (Sirad Anwaj) Personnel Manager J.K. Nagar (R) Mines	

WITNESSES

Name	Desination	U.M. No.	Area Colliery	Signature
1. Sri Chandeswar Routh	SDL Optr.	110195	J.K.Nagar ® Mines	Sd/-
2. Sri Pramod Kr. Shaw	DG Set Optr.	396809	Chapuikhas	Sd/-

नई दिल्ली, 3 फरवरी, 2010

New Delhi, the 3rd February, 2010

का. आ. 615.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 25/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/322/2006-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

S. O. 615.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of Eastern Coalfields Limited, and their workmen, received by the Central Government on 3-2-2010.

[No. L-22012/322/2006-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
ASANSOL

Reference No. : 25/ITC/2007

Management of Nimcha Colliery of E.C.L.

Vrs.

Secretary, Koyla Mazdoor Congress

Settlement in Lok Adalat

Held on 29th August At Kunustoria Guest House

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat.

The Terms of agreement to form part of the Award.

MANORANJAN PATTNAIK, Presiding Officer

FORM- H

(See Rule 58) under Industrial Dispute

Central Rules-1957

Memorandum of settlement arrived at between Sri Raju Bhuiya, Ex. Ug. Loader U.M.No. 170459 of Nimcha Colliery and Management of Satgram Area (ECL).

Representative of Management Person Concerned

1. Sri S. Saran, Chief General
Manager, Satgram Area.

1. Sri Raju Bhuiya,
Ex. Ug. Loader Nimcha
Colliery

2. Sri J.S. Sayare, Dy. C.P.M.,
Satgram Area.

3. Sri U.Aich, P.M., Satgram Area

4. Sri B. Bhowmik, Dy. P.M., Nimcha Colliery.

Short Recital of the case

1. Sri Raju Bhuiya, Ex.Ug. Loader, U.M.No. 170459 of Nimcha Colliery was charge sheeted for absenting from duty from 27-1-2005. A departmental enquiry was conducted, wherein the charges were proved and accordingly Sri Bhuiya was terminated from his services on dismissal vide letter No. SAT/Per./Termination/2181 dated 15/16-5-2006.

2. Sri Raju Bhuiya, Ex. U.G. Loader, U.M.No. 170459 of Nimcha Colliery had submitted mercy application for his re-instatement in service and the Competent Authority, ECL has been pleased to approve re-instatement of his service on revocation of his aforesaid order of dismissal without payment of any back wages subject to ascertaining his medical fitness as communicated by P.M. (I&IR), ECL, HQ vide letter Ref. No. ECL/CMD/C-6(D)/L&IR/09/DA/897 dated 21-8-09.

Terms and Condition of Settlement

1. Agreed that Sri Raju Bhuiya, Ex. U.G.Loader, U.M.No. 170459 of Nimcha Colliery will be re-instated in service in his previous designation as he has been declared medically fit for Ug JOB by the competent medical board, Satgram Area and to be posted in any of the colliery under Satgram Area where there is requirement.

2. Agreed that this settlement resolves the dispute fully and finally. Neither the workman concerned nor his Union shall raise any dispute in any forum /court of law after this settlement in this regard. Even he has assured for unconditional withdrawal of his CGIT Case No. 25/2007 before his re-instatement . It is also agreed that the person concerned will also submit a "No Dispute " certificate in this regard to the management. Process for his re-instatement in service will be made accordingly.

3. Colliery Authority have confirmed that Sri Raju Bhuiya has not yet drawn his gratuity from the company but Sri Bhuiya has confirmed that he has drawn his CMPF accumulations.

4. Agreed that the Ex-employee concerned will not be entitled for any back wages for the period of his idleness and the period of his absence/idleness shall be treated as DIES-NON.

5. Agreed that the Ex-employee will be allowed the benefit of continuity of service for the period of his idleness for the purpose of computation of his final gratuity payment only.

6. Agreed that the ex-employee on such re-instatement in service shall be on probation for a minimum period of ONE (1) Year and the same will be confirmed only on receipt of satisfactory performance certification on expiry of probation period by CGM/GM on the area.

7. Agreed that the instant settlement has been arrived with the free consent of the ex-workman concerned as he has found the settlement to be reasonable , just and free from any kind of influence.

8. Agreed that a copy of this Memorandum of Settlement shall be sent to the CGIT Asansol/Regional Labour Commissioner (C) , Asansol, for registration as per I.D. Act, 1947.

9. The workman will submit his undertaking that in future he will not commit the misconduct of unauthorised and/or habitual absence from duty.

10. The Agreement is signed by both the parties on 16-9-2009.

Management Representatives Ex-Workman Concerned
Sd/-

1. (S. Saran)
Chief General Manager
Satgram Area
Sd/-

1. LTI of (Raju Bhuiya)
Ex. Ug.Loader/
Nimcha Colliery

2. (J.S.Sayare) Dy. Chief
Personnel Manager
Satgram Area
Sd/-

3. (U. Aich) Personnel Manager
Satgram Area
Sd/-

4. (B.Bhowmik) Dy. Personnel Manager
Nimcha Colliery

WITNESSES

Name Designation U.M.No. Area/ Colliery Signature

1. Sri Kamdeb Bhuiya Pump khalasi 131403 Chapuikhas

2. Sri Bablu Bouri U.G.Loader 354225 Nimcha

नई दिल्ली, 3 फरवरी, 2010

का.आ. 616.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एन.एल.सी. एल.के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चैन्नई के पंचाट (संदर्भ संख्या 41/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/138/2005-आई.आर.(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 616.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2006) of the Central Government Industrial Tribunal/Labour Court Chennai as shown in the Annexure, in the Industrial dispute between the management Neyveli Lignite Corp. Ltd., and their workman, which was received by the Central Government on 03-02-2010.

[No. L-22012/138/2005-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Friday, the 29th January, 2010

PRESENT : A.N.JANARDANAN, Presiding Officer

Industrial Dispute No. 41/2006

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes, Act, 1947 (14 of 1947), between the Management of Neyveli Lignite Corporation Ltd., and their Workman).

BETWEEN

Shri B.Arasu

1 Party/Petitioner

Versus

The Director

(Personnel) Neyveli Lignite Corporation Ltd. Neyveli
Neyveli-607801

2nd party/Respondent

APPEARANCES

For the 1st Party/Petitioner

Sri V. Ajay Khose:

For the 2nd Party /Management

M/s.N.A.K.Sharma,
N.Nithianandham

AWARD

The Central Government, Ministry of Labour vide its Order No. L-22012/138/2005-IR (CM-II) dated 25-7-2006 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the Management of Neyveli Lignite Corporation Ltd. in terminating the services of Shri B.Arasu w.e.f. 1-12-1999 is legal and justified? If not, to what relief the workman is entitled to?”

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 41/2006 and issued notices to both sides. Both sides entered appearance through their advocates and filed their Claim Statement and Counter Statements as the case may be.

3. The contentions in the Claim Statement briefly read as follows:

The first party worker Grade-II under the Respondent who joined as Industrial Worker on 12-03-1984 was appointed as Store Keeper Grade “B” on 20-07-1990. While working in CARDS Stores under Stores-in-Charge, he was to draw materials from 3 main stores as per instruction of Stores-in-Charge to issue materials to the staff under the CARD department. After 1992-93, practice of giving requisition slip for drawing materials from CARD Stores was not followed. Materials were issued on oral request. Materials were issued thereafter on oral request after recording the name, number, quantity of each material and also the name of the recipient in the Daily Issue Register under the signature of the recipient. On 03-07-1997, the first party received 40 whatman microfiber filter papers from the main stores. On 16-07-1997, one Mr. Ravichandran, 1W Grade-I made a request for issue of the said filter papers without stating the number required. The petitioner allowed him to take all the 40 boxes since they were purchased only for the pollution section. On the information of the said Ravichandran that he could not carry all the 40 boxes, then 25 boxes were issued to Ravichandran who put his signature in the Issue Register for receipt thereof. On 24-07-1997, one Elangovan, Senior Chemist asked for 3 materials which were written in the Issue Register then petitioner finding the 15 filter paper boxes lying in the CARD Stores asked Elangovan to take them also, which was agreed to by him. The petitioner recorded the issue of 15 boxes of filter papers as the fourth item in the Register. Since the bracket had been put for 3 items before, the first party put another bracket covering all the items. Elangovan signed in the Issue Register for all the four items. On 12-03-1998 one Mr. Kuppaswamy, Scientist asked for filter paper boxes. There was no stock and hence Kuppaswamy was informed accordingly. On 13-03-1998, Kuppaswamy complained that only 25 boxes of filter paper were received and that 15 boxes were not received by Sri Elangovan. On 13-03-1998 after verification it was reported that 15 boxes were not available in any Section. An enquiry was held with all the staff in the concerned sections. The matter was directed to be investigated into. On 07-05-1998 liability was fixed on the petitioner on suspicion. On 29-05-1998 he was charged by a memo that he was responsible for the missing of 15 boxes (ii) due to negligence of the Second Party

Management incurred loss of Rs. 75,000. In his explanation dated 20-06-1998, he denied the charges. An enquiry was held. According to the Presenting Officer, the charge was for negligence and resultant loss. In the enquiry originally 7 witnesses and thereafter 2 more witnesses were examined by the Management to fill up the lacunae in the cross examination without reopening the enquiry. Some witnesses connected to Pollution Section retracted from their earlier statements to save themselves. The Enquiry Officer travelled beyond the Charge Memo which is only in regard to the responsibility for the missing of the 15 boxes and gross negligence of the petitioner. As against the charge, the Enquiry Officer held it as a case of theft and taken the theft as proved. The Disciplinary Authority without any opportunity to the petitioner to submit explanation accepted the findings. A show cause notice was issued and another notice on 20-06-1999 for recovery of Rs. 1,00,000/- for theft of 20 boxes. Despite his explanation, he was dismissed on 19-07-1999 taking theft of 20 boxes as proved and also ordered recovery of Rs. 1,00,000/- with forfeiture of his entire gratuity. Appeal preferred was rejected on 30-11-1999. Hence the ID on the failure report of the conciliation. The enquiry was not fair and proper. Dismissal was illegal and unjustified. Initiation of disciplinary action is malafide and illegal. Common disciplinary action ought to have been initiated against the petitioner and Elangovan. Examining Elangovan as a witness who had also apparent taint of allegation is discriminatory. Based on his evidence dismissing petitioner is illegal. It is also victimization. Finding on a charge contrary to the Charge Memo makes the dismissal illegal. Finding that only 20 boxes were issued on 16-07-1997 is illegal and is beyond the charge. It is an afterthought. Holding that petitioner failed to prove 25 boxes on 16-07-1997 and 15 boxes on 24-07-1997 and shifting the burden on petitioner is erroneous. In the absence of evidence to prove the present charges reliance on earlier punishment of first party is erroneous, which punishment itself was illegal. When the 25 filter papers received on 16-07-1997 would be sufficient for 9 months what was the necessity for Kuppaswamy to enquire or require for the remaining 15 filter paper boxes on 12-03-1998? This would falsify their stand that there was no necessity for requirement of the balance of 15 boxes on 24-07-1997. Only in the premises the suspicion arose. No indent was placed thereafter till 19-03-1999 establishing that 15 boxes were issued to them. It was overlooked that oral evidence could not prevail over the documentary. There was no direct or acceptable evidence to prove the theft. The filter paper is used only in the Pollution Section. It cannot be sold in the open market. Conclusion that number of boxes written on 16-07-1997 was corrected from 20 into 25 is wrong. Hence the prayer.

4. In the Counter Statement, the contentions raised read as follows:

On 12-03-1998 when Kuppaswamy, Scientist approached the petitioner for filter paper, the petitioner informed that 25 boxes out of 40 were issued to S. Ravichandran on 16-07-1997 and 15 boxes to Elangovan on 24-07-1997. When verified with Ravichandran by Kuppaswamy, it was informed that a portion out of the 40 boxes and not 25 boxes was received by Ravichandran on 16-07-1997 and not as recorded by the petitioner. Ravichandran had acknowledged receipt of the material affixing his signature in the Issue Register but a manipulation appeared to exist as to the quantity. Elangovan, Senior Chemist. Chemist said that he received 6 cells of torch light, 1000 nos. of polythene bottles (5 nos.) and big size of polythene panel on 24-07-1997 and acknowledged by signing putting a small bracket in the Issue Register. What petitioner recorded was as if he had issued 25 boxes to Ravichandran on 16-07-1997 and 15 boxes to Elangovan on 24-07-1997. In the preliminary fact finding enquiry conducted by Chief CARD, the petitioner admitted having put the bigger bracket covering the 4th item alleged to be received by Elangovan on 24-07-1997. In an investigation followed, the first party was found responsible. The enquiry was held observing principles of natural justice, the petitioner participated fully in the enquiry. For not obtaining acknowledgement for receipt of materials, the petitioner is liable. Only after placing indent, the filter paper is drawn from the Central Stores by the Store in CARD and not issued immediately on receipt in the CARD Stores. That issue of materials is based on oral request is denied. It is denied that Ravichandran informed that he would take only portion of the 40 boxes. The petitioner issued only 20 boxes on 16-07-1997 to Ravichandran and later manipulated as 25 boxes. It is denied that Elangovan was issued 15 boxes with 3 other materials on 24-07-1997. It is denied that on reminder from the petitioner, Elangovan has received 15 boxes from the CARD Stores. When Kuppaswamy requested for 15 boxes, he was informed by the petitioner that Elangovan had taken the same on 24-07-1997. Detailed investigation revealed that the petitioner had manipulated everything. It is a case of manipulation with malafide intention for personal gains for the petitioner. An issue of materials as on 24-07-1997 had never taken place. The petitioner had manipulated the records to make such a show. The liability fixed on the petitioner is not on suspicion. Charge Memo was issued not only for negligence of duty but also for theft, fraud, dishonesty, habitual negligence, neglect of work and breach of Standing Orders as well as for resultant loss to the value of Rs. 75,000/-. The Presenting Officer found that the petitioner is responsible for missing boxes. The petitioner was not prejudiced by the alleged non-supply of enquiry findings. There is no double jeopardy with the recovery of the penalty. The charges were very grave and management lost confidence in the petitioner. There is no malafide or illegality in the disciplinary action. No violation of rules or procedure or discrimination against the petitioner.

There is no illegality or bias. Mere reference by the Enquiry Officer that the petitioner did not prove his innocence does not render the report defective. The claim may be dismissed.

5. Evidence consists of the oral evidence of WW 1 by way of Proof Affidavit followed by Cross-Examination and EX.W1 to EX.W25 and on the side of the Respondent MW1 was examined and EX.M1 to EX.M11 were marked.

6. Points for consideration are:

(i) Whether the termination of the service of the petitioner from the Respondent/Management is legal and justified?

(ii) To what relief the concerned workman is entitled?

Points (i) & (ii)

7. Heard both sides and perused the records. The case of the petitioner is that the enquiry is not fair and proper, that the Enquiry Officer travelled beyond the Charge Memo which is only for negligence but the theft is taken as proved. Dismissal is also assailed as illegal and unjustified. Initiation of disciplinary action is challenged as being malafide and illegal. Common disciplinary action was to have been initiated together with Elangovan. Elangovan with apparent taint of allegation was not to be made a witness. Shifting burden on the petitioner to prove his innocence is erroneous. Finding on a charge contrary to the Charge Memo makes the dismissal illegal. The action arose on suspicion which has no leg to stand. There was no direct/acceptable evidence.

8. Contra arguments on behalf of the Respondent are that the petitioner had admitted having put the bigger bracket covering the fourth item alleged to be received by Elangovan on 24-07-1997. The petitioner fully participated in the enquiry which was held observing principles of natural justice. For not obtaining signature for receipt of materials petitioner alone is liable. The petitioner manipulated records with malafide intention for his personal gains, liability fixed was not merely on suspicion, Charge Memo was not only for negligence but also for theft, fraud, etc. Charges are grave and management lost confidence in the petitioner and that the petitioner failed to prove his innocence is a merely casual reference of the Enquiry Officer and decision does not rest on that reasoning.

9. Going by the enquiry proceedings and all other relevant documents I am led to conclude that the arguments on behalf of the petitioner are not with any substance. Discernibly there is nothing wrong with the enquiry and the finding entered into in the culmination of the same. Though, in the preliminary enquiry and the investigation followed the responsibility was fixed on the petitioner based on inferences, assumptions or suspicion but based on circumstances, the same was only to pinpoint the exact delinquent who is to be proceeded against in regard to the missing of the valuable micro-fibre filter paper from the stores. Though initial fixing of the liability on the petitioner

arose from those factors, it is only after holding an enquiry which discernibly went well that the petitioner was proved to be the delinquent who is found responsible for the missing of the micro-fibre filter papers. It is pertinent to note that the petitioner had put the bigger bracket covering 15 nos. of filter papers. Further it is in evidence there has been tampering of the figure 20 into 25 signifying to show issuance of 25 micro-fibre filter papers instead of 20. The case of the Respondent is that there was no actual delivery of micro fibre filter papers on 24-07-1997 whereas it is noted that there is an issue of 15 papers on the date. Except of the correction of 20 into 25 signifying issuance of micro-fibre filter papers, the original figure relating to the issue of filter papers in the first instance is to be 20 only. What is proved is that there was only issue of 20 filter papers totally and there is missing of 20 filter papers regarding which the enquiry was held. Admittedly the petitioner is the Store Keeper responsible for the maintenance of the register. There is specific rules for indenting and issuance of the materials from the Central Stores and distribution to the various departments under CARD through the Stores especially the Pollution Control Wing where the user of the filter papers is put to. From the enquiry it has been found that the petitioner has been irresponsible in not properly maintaining the register, not obtaining proper acknowledgements for the items issued, etc. The items being very costly one cannot lose sight of the fact that the person charged with the duty has to be very circumspect in the discharge of the duties. The required amount of circumspection expected of the petitioner is not seen bestowed by him. That has been reason why the petitioner has not been able to account for the discrepancy in regard to the actually issued and for the balance to be found in the stock of the micro-fibre filter papers in the first instance. When one ponders a step further there are circumstances from which it could be found that the petitioner has been doubtful in his conduct and manner with which he dealt with the affair of the issuance of the materials to different persons. In the matter of proof of disputed facts, the evidence to be resorted could also be circumstantial evidence and conduct of the delinquent. The circumstances centering round the manner in which the petitioner tried to explain away the discrepancy speak volumes against the petitioner. Therefore, argument that there is no direct or acceptable evidence advanced by the learned counsel for the petitioner is only to be rejected. There is no illegality or impropriety in the enquiry or in the finding entered into by the Enquiry Officer. There is no element of victimization against the petitioner. There is no violation of natural justice in the holding of the enquiry. The Charge Memo is properly couched. There is no double jeopardy because punishment is for the misconduct and penalty is for the loss sustained by the department. It is a case where it is well for the management to entertain a belief that it could no longer repose confidence in the petitioner. There is no malafide or illegality in the disciplinary action. There

is no violation or rules of procedure. There is no discrimination also. Therefore, there is nothing wrong in the finding that the petitioner is responsible for the missing of the valuable materials. As to whether the petitioner could also be held liable for theft of the articles the finding of the Enquiry Officer that it could be so cannot be found to be illegal, perverse or that it is one which no reasonable man will find so. Therefore, there is nothing wrong in the entirety of the finding and the same is to be upheld as valid and proper inviting no interference by this Tribunal. It is found so.

10. Regarding the punishment, I am of the view that though the same is exclusively within the realm and prerogative of the management under Section-11A of the ID Act where for good and valid reasons the Tribunal is clothed with authority to interfere in appropriate cases. The capital punishment of dismissal resulting in the economic death of the petitioner was envisaged understandable in view of the fact that the management lost confidence in the petitioner. In other words, the management wanted to avoid him from being continued to be employed under it. For the said purpose, the management could have imposed on him a bit lesser punishment of a removal or compulsory retirement of the petitioner from service lest the petitioner may be deprived of his terminal benefits to which he would otherwise be entitled including refund of his forfeited gratuity. So ordered.

11. Resultantly, the Respondent is directed to replace the punishment of dismissal of the petitioner from service by a removal or compulsory retirement from service with terminal benefits including refund of forfeited gratuity and to that extent the petitioner is entitled to an order in his favour and to none else.

12. The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 29th January, 2010)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:-

For the I Party/Petitioner : WW1, Sri B. Arasu

For the II Party/Respondent : MW1, Sri T. Kuppusamy

Documents Marked:

On the petitionere side

Ex. No.	Date	Description
Ex. W1	-	The Issue Register pertaining to the year 1997
Ex. W2	13-03-1998	Complaint given by Mr. Kuppusamy, Scientist to Chief/CARD
Ex. W3	07-05-1998	Enquiry report by Chief Security Offices.

Ex. W4	13-04-1998	Complaint made by the 1st party to the Chief/Card.
Ex. W5	12-05-1998	Order of Chief/Card directing to hold an enquiry
Ex. W6	30-06-1998	Order of Disciplinary Authority directed the 1st Party to appear before the Enquiry Officer
Ex. W7	26-06-1999	Order of the Chief/Card to recover the amount of Rs. 1,00,000 from the 1st Party
Ex. W8	01-11-2000	Industrial Dispute raised by the 1st Party.
Ex. W9	09-01-2001	Conciliation notice sent by the RLC (Control)
Ex. W10	26-06-2002	Mercy Petition filed by the 1st Party to the Chairman-cum-Managing Director
Ex. W11	28-02-2003	Representation sent by the Union to the Director/Personnel
Ex. W12	18-07-2003	Order in Writ Petition No. 19481/99
Ex. W13	12-02-2005	Rejoinder filed by the 1st Party
Ex. W14	28-04-2005	Failure Report
Ex. W15	16-11-1993	Charge sheet issued by the 2nd Party to the 1st Party
Ex. W16	29-10-1966	Inspection report submitted by the Deputy General Manager
Ex. W17	06-11-1997	Appeal preferred by the 1st Party to the Appellate Authority
Ex. W18	13-05-1998	Order of punishment issued by the 2nd Party to the 1st Party
Ex. W19	-	Chief Card Report Issue Register
Ex. W20	16-01-2003	Check Measurement Report
Ex. W21	11-01-1994	Check Measurement Report
Ex. W22	22-01-2004	Inspection-cum-Receiving report
Ex. W23	13-05-1998	Order of the Appellate Authority
Ex. W24	31-05-1998	Transfer of order of the 1st Party
Ex. W25	19-03-1999	Voucher for purchasing Waterman Filter Paper from main store

On the Management's side

Ex. No.	Date	Description
Ex. M1	04-05-1998	Security Investigation Report
Ex. M2	29-05-1998	Charge Memo
Ex. M3	20-06-1998	Explanation given by B. Arasu
Ex. M4	14-09-1998	Enquiry Proceedings
Ex. M5	-	Enquiry Report
Ex. M6	24-06-1999	Order of Proposal of Punishment
Ex. M7	10-07-1999	Reply to the Proposal of Punishment
Ex. M8	20-07-1999	Final Order passed by the Disciplinary Authority
Ex. M9	03-08-1999	Appeal preferred by the B. Arasu
Ex. M10	30-11-1999	Order of the Appellate Authority
Ex. M11	27-02-2004	Letter addressed to Asstt. Labour Commissioner.

नई दिल्ली, 3 फरवरी, 2010

का.आ. 617.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण असनसोल के पंचाट (संदर्भ संख्या 93/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/208/2007-आईआर (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 617.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.93/2007) of the Central Government Industrial Tribunal-cum- Labour Court ASANSOL as shown in the Annexure, in the Industrial dispute between the management of M/s. Eastern Coalfields Limited and their workmen, received by the Central Government on 3-2-2010.

[No. L-22012/208/2007-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL**

PRESENT : Sri Manoranjan Pattnaik, Presiding Officer

Reference No. 93 of 2007

Parties : The Agent, Jemehari (R) Colliery of M/s. ECL,
Bidhanbag Burdwan.

Vrs

Rakesh Kumar, General Secretary, Koyla
Mazdoor Congress, Gorai Mansion, G.T. Road,
Asansol, Burdwan.

REPRESENTATIVES

For the management	P.K. Goswami Advocate
For the union (Workman)	None
Industry: Coal	State : West Bengal

dated the 29-08-2009

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Government of India through the Ministry of Labour vide its letter No. L-22012/208/2007-IR(CM-II) dated 30-10-2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of M/s. ECL in denying appointment to Shri Dharmender Shaw the son in law of the deceased worker (Late Ms. Umda Devi), is legal and justified? If not, to what relief is the dependent of the deceased worker entitled?"

Having received the Order No. L -22012/208/2007-IR (CM-II) dated 30-10-2007 of the above said reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 93 of 2007 was registered on 20-11-2007 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On persual of the record it appear that petition dated 18-08-2009 has been filed by the workman (Shri Dharmendra Shaw) praying for withdrawal of the dispute along with a copy of Form 'H' containing the terms and conditions of settlement. There is no need for further proceeding. The Industrial Dispute no more exist and hence an award to that effect is to be passed, Accordingly.

ORDERED

Let an "Award" be and same is passed as per above. Send the copies of the award to the Government of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

MANORANJAN PATTNAIK, Presiding Officer

नई दिल्ली, 3 फरवरी, 2010

का.आ. 618.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (संदर्भ संख्या 22/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/136/2003-आईआर (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 618.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2004) of the Central Government Industrial Tribunal-cum-Labour Court ASANSOL as shown in the Annexure, in the Industrial dispute between the management of 3 & 4 Incline, Jhanjra Area of M/s E.C. L. and their workmen, received by the Central Government on 03-02-2010.

[No. L-22012/136/2003-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT ASANSOL

Reference No. : 22/ITC/2004

Management of 3 & 4 Incline of Jhanjra Area of E.C.L.

Vrs.

Vice President, Koyla Mazdoor Congress

Settlement in Lok Adalat

Held on 29th August at Kunustoria Guest House

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat.

The Terms of agreement to form part of the Award.

MANORAJAN PATTNAIK, Presiding Officer

FORM—"H"

[See Rule 58 under Industrial Dispute (Central) Rules, 1957]

Memorandum of Settlement between the Management of M/s. Eastern Coalfields Limited and their Ex. workman, Sri Virendra Rai Trainee (T.R.) (UG), U.M.No. 129421, of MIC., Jhanjra Project Colliery.

Parties : Representing the management : 1. Sri K. R

Kumar

P.M. (I/
C)

2. Sri Nazrul
Islam, Sr.
P.O.M.I.C.

Representing the workmen/Union : 1. Sri P.C.
Pandey
Vice
President,
KMC,

2. Sri
Virendra
Rai,
Workman.

SHORT RECITAL OF THE CASE :

Sri Virendra Rai, Trainee (T.R.) (UG) of M.I.C., Jhanjra Project Colliery was absenting from his duty w.e.f. 23-04-2002 without permission or information to the satisfaction of the management. After issuing chargesheet under clause 26-29 of Certified Standing Orders, and after conducting domestic enquiry, and completing all formalities, and also considering his past attendance and service record, the management dismissed Sri Virendra Rai from the services of the company vide letter No. CGM/JNR/PER/08/2002/1691 dated 08/09-10-2002.

After his dismissal, the General Secretary, K.M.C., raised an I. D. before the Asstt. Labour Commissioner (C), Raniganj at Durgapur, against the alleged illegal dismissal, vide Ref. No. 1/32/2005-AI.CR dated 06-07-2005, which ended in failure, and was duly referred to the CGIT, Asansol, vide Ref. No. 57 of 2006.

Sri Virendra Rai, trainee (T.R.) (UG) of M.I.C., Jhanjra Project colliery submitted mercy application for reinstatement in service in his substantive post without payment of any backwages.

The Personnel Manager (I&IR), ECL (HQ), vide his letter under reference No. ECL/CMD/C-6D/11/09/DA/181 dated 13/17-02-2008 has communicated the approval of the competent authority for reinstatement of Sri Virendra Rai without any back wages, after entering into mutual settlement in form-'H'.

In view of the above competent approval, Sri Virendra Rai may be reinstated as per the following terms and condition, annexed herewith, which have been mutually agreed and signed.

TERMS OF SETTLEMENT

1. Agreed that Sri Virendra Rai will be reinstated in service in his previous designation in underground at Jhanjra Project colliery, as per requirement. On reinstatement he shall be on probation for a minimum period

of 1 (One) year and the same will be confirmed only on satisfactory performance during the said period. Before joining service, his physical fitness will be ascertained by the Area Medical Officer, Jhanjra Area.

2. Agreed that Sri Virendra Rai, will not be paid any back wages or benefit for the idle period.

3. Agreed that Sri Virendra Rai will have to unconditionally withdraw the pending case (57 of 2006) at CGIT, Asansol, and will submit "No dispute" certificate to the management.

4. Agreed that the period of absence/idleness of Sri Virendra Rai shall be treated as "Dies-non" and he will be allowed the benefit of continuity of service for the period of idleness only for the purpose of computation of his final gratuity payment.

5. Agreed that Sri Virendra Rai and the concerned Union confirmed that legal dues such as gratuity, refund of CMPF contribution, or any other dues, have not been drawn till date arising out of dismissal order No. CGM/JNR/PER/08/2002/1691 dated 08/09-10-2002.

6. Agreed that this settlement resolves the dispute fully and finally. The concerned workman/Union will not raise any dispute or challenge the contents of any points of this agreement, before any forum/Court of law, at present, or in future.

7. Agreed that Sri Virendra Rai will also not make any claim for wages or any other benefit (House rent, LTC, L.I.C, Medical benefit, Annual Increment, etc.) for the idle period from the date of dismissal i.e. 09-10-2002 till the date of reinstatement, at present or in future.

8. Agreed that a copy of this agreement will be submitted before the Asstt. Labour Commissioner (C) Raniganj at Durgapur/Regional Labour Commissioner (C) Asansol, for registration as per I. D. Act, 1947.

9. Agreed that the instant settlement has been arrived at with free consent of the workman and the Union concerned as they have found the settlement to be reasonable, just and free from any kind of influence.

10. That these terms of settlement have been made by the parties on this the Eleventh day of April 2009.

On behalf of the
workman/Union

1. (P. C. Pandey)

Vice President,

K.M.C. Union

2. (Virendra Rai)

concerned workman

On behalf of the
Management

1. (K.R. Kumar)

Personnel Manager

(C) Jhanjra Area

2. (Nazrul Islam)

Sr. P. O.

MIC Jhanjra

Project Colliery

Witnesses:—

Sl. No.	Name	Designation	U/M No.
1.	Ramayan	Nunio Fitter	694254
2.	Debnath Singh	Sr. DMO,	693253

Place of Posting	Signature
MIC	Ramayan Nunia
Area	Deenath Singh

FORM—"H"

[See Rule 58 under Industrial Dispute (Central) Rules, 1957]

Memorandum of Settlement between the Management of M/s. Eastern Coalfields Limited and their Ex. workman, Sri Ramdeo Bhuia U.G. Loader No. 688438 of 3&4 Incline., Jhanjra Project Colliery.

Parties. Representing the management : 1. Sri K. R. Kumar
P.M.(VC)
2. Sri Nazrul Islam,
P.O,
M.I.C.
Representing the workmen/union : 1. Sri P.C. Pandey
Vice
President,
CMC,
2. Sri Ramdeo Bhuia,
EX.
Workman.

SHORT RECITAL OF THE CASE :

Sri Ramdeo Bhuia, U.G. Loader, U. M. No. 688438 of 3 and 4 Incline. Jhanjra Project Colliery was absenting from his duty w.e.f. 21-01-1997 without permission or information to the satisfaction of the management. After issuing charge-sheet under clause 17(i) (n) of Model Standing Orders, and after conducting domestic enquiry, and completing all formalities, and also considering his past attendance and service record, the management dismissed Sri Ramdeo Bhuia, from the services of the company vide letter No. CGM/JNR/PER/08/97/1486 dated 08/12-10-1997.

After his dismissal, the General Secretary, K.M.C., raised an I. D. before the Asstt. Labour Commissioner (C), Raniganj at Durgapur, against the alleged illegal dismissal,

vide Ref. No. 1/57/2002-ALCR which ended in failure, and was duly referred to the CGIT, Asansol, vide Ref. No. 22 of 2004.

Sri Ramdeo Bhuia, Ex-Ug Loader, U. M. No. 688438 of 3&4 Incline., Jhanjra Project Colliery submitted mercy application for re-instatement in service in his substantive post without payment of any backwages.

The Personnel Manager (I&IR), ECL (HQ), vide his letter under reference No. ECL/CMD/C-6D/L&IR/09/DA/787 dated 22-7-2009 has communicated the approval of the competent authority for reinstatement of Sri Ramdeo Bhuia without any back wages, after entering into mutual settlement in Form-‘H’.

In view of the above competent approval, Sri Ramdeo Bhuia, may be reinstated as per the following terms and conditions, annexed herewith, which have been mutually agreed and signed.

TERMS OF SETTLEMENT

1. Agreed that Sri Ramdeo Bhuia, will be reinstated in service in his previous designation in underground at Jhanjra Project Colliery, as per requirement. On reinstatement, he shall be on probation for a minimum period of 1 (One) year and the same will be confirmed only on satisfactory performance during the said period. Before joining service, his physical fitness will be ascertained by the Area Medical Officer, Jhanjra Area.

2. Agreed that Sri Ramdeo Bhuia, will not be paid any back wages or benefit for the idle period.

3. Agreed that Sri Ramdeo Bhuia, will have to unconditionally withdraw the pending case (22 of 2004) at CGIT, Anansol, and will submit “No dispute” certificate to the management.

4. Agreed that the period of absence/idleness of Sri Ramdeo Bhuia, shall be treated as “Dies-non” and he will be allowed the benefit of continuity of service for the period of idleness only for the purpose of computation of his final gratuity payment.

5. Agreed that Sri Ramdeo Bhuia, and the concerned Union confirmed that legal dues such as gratuity, refund of CMPF contribution, or any other dues, have not been drawn till date arising out of dismissal order No. CGM/JNR/PER/08/97/1486 dated 08/12-07-1997.

6. Agreed that this settlement resolves the dispute fully and finally. The concerned workman/Union will not raise any dispute or challenge the contents of any points of this agreement, before any forum/Court of law, at present, or in future.

7. Agreed that Sri Ramdeo Bhuia, will also make any claim for wages or any other benefit (House rent, LTC,

LLTC, Medical Benefit, Annual Increment, etc.) for the idle period from the date of dismissal i.e. 12-07-1997 till the date of reinstatement, at present or in future.

8. Agreed that a copy of this agreement will be submitted before the Asstt. Labour Commissioner (C) Raniganj at Durgapur/Regional Labour Commissioner (C) Asansol, for registration as per I. D. Act, 1947.

9. Agreed that the instant settlement has been arrived at with free consent of the workman and the Union concerned as they have found the settlement to be reasonable, just and free from any kind of influence.

10. That these terms of settlement have been made by the parties on this the Eighth day of September, 2009.

On behalf of the Workman/Union	On behalf of the Management
1. (P. C. Pandey) Vice President, C.M. C. Union	1. (K.R. Kumar) Personnel Manager (I/C) Jhanjra Area
2. (Sri Ramdeo Bhuia,) Concerned workman	2. (Nazrul Islam) Sr. P. O. MIC Jhanjra Project Colliery

Witnesses:—

Sl. No.	Name	Designation	U.M.No.	Place of Posting	Signature.
1.	Shib Kr Nomia	H. operator	688440	3/4 Sgib Kr. Nonia	
2.	Fayuram Karr	Cet I	117523	3/4 Frkaurer	

नई दिल्ली, 3 फरवरी, 2010

का.आ. 619.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एन.एल. सी.एल.के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चैन्नई के पंचाट (संदर्भ संख्या 32/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/272/2003-आईआर (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 619.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2004) of the Central Government Industrial Tribunal-cum-Labour Court Asansol as shown in the Annexure, in the Industrial dispute between the management Nimcha Colliery of

M/s. ECL Ltd., and their workmen, received by the Central Government on 03-02-2010.

[No. L-22012/272/2003-IR(CM-II)]

AJAY KUMAR GAUR; Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Reference No. : 32/ITC/2004

Management of Nimcha Colliery of E.C.L.

Vrs.

General Secretary, Koyla Mazdoor Congress

Settlement in Lok Adalat

Held on 29th August at Kunustoria Guest House

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat.

The Terms of agreement to form part of the Award.

MANORANJAN PATTNAIK, Presiding Officer

FORM—"H"

(See Rule 58) under Industrial Dispute Central Rules,
1957

Memorandum of Settlement arrived at between Koyla Mazdoor Congress (K MC) Representing the workman Sri Rajesh Harijan Ex. U.G.Loader, U.M. No. 354514 of Nimcha Colliery and Management of Satgram Area (ECL).

Representative of Management

Representative of Union

1. Sri S. Saran,
Chief General Manager, Satgram
Area.

1. Sri H.L.Soni
Secretary, K.M.C.
Union

2. Sri J.S. Sayare,Dy, C.P.M.
Satgram Area

2. Sri Rajesh Harijan
Concerned
Workman

3. Sri U. Aich, P.M. Satgram Area

4. Sri P.K. Sengupta. P.M.Nimcha
Colliery.

Short recital of the case

1. Sri Rajesh Harijan , Ex. U.G. Loader, U.M. No. 354514 of Nimcha Colliery was charge sheeted for absenting from duty from 27-11-1995 to 12-05-1996. A departmental

enquiry was conducted, wherein Sri Rajesh Harijan did not participate, although the notice of enquiry was served to him.

2. After enquiry, the charges were proved, Service of Sri Rajesh Harijan was terminated on dismissal vide letter reference No. SAT/GM/PER/C/97/570 (P) dated 31-07-1997 by General Manager, Satgram Area.
3. Sri Rajesh Harijan Ex. U.G. Loader, U.M. No. 354514 of Nimcha has submitted mercy application dated 25-09-2008 for re-instatement in service, the Competent Authority, ECL has been pleased to approve re-instatement of his service on revocation of his aforesaid order of dismissal without payment of any back wages subject to ascertaining his medical fitness as communicated by P.M. (L&IR), ECL, HQ vide letter Ref. No. ECL/CMD/C-6(D)/IL/09/DA/525 dated 20/21-05-2009.

Terms and conditions of settlement

1. Agreed that Sri Rajesh Harijan Ex. U.G. Loader, U.M. No. 354514 of Nimcha Colliery will be re-instated in service in his existing capacity after ascertaining medical fitness and posted in any of the colliery under Satgram Area.
2. Agreed that this settlement resolves the dispute fully and finally. Neither the workman concerned nor his Union shall raise any dispute in any forum/court of law after this settlement in his regard.
3. Union assured for unconditional withdrawal of CGIT Case No.32/2004 (Sri Rajesh Harijan—Vs—Management of Nimcha (R) Colliery) and confirm the same in writing that such matter is not pending in any other Court/ forum. The union and the workman will submit a "NO DISPUTE" certificate in this regard to the management Re-instatement proposal will be processed accordingly.
4. Sri Rajesh Harijan and concerned union confirmed that legal dues such as gratuity, refund of CMPF or any other dues have not been drawn till date arising out of dismissal order No. SAT/GM/PER/C/97/570 (P) dated 31-07-1997.
5. Agreed that the instant settlement has been arrived with the free consent of the workman concerned and the union as they have found the settlement to be reasonable, just and free from any kind of influence.
6. Agreed that a copy of this Memorandum of Settlement shall be sent to the C.G.I.T, ASANSOL/Regional Labour Commissioner (C), Asansol, for registration as per I.D. Act, 1947.
7. The workman and union agreed that no back wages will be paid for the period of idleness including unauthorized absence till the date of re-instatement.

8. It is also agreed that the period of idleness of the ex-employee from the date of dismissal i.e. 31-07-1997 till the date of re-instatement will be treated as DIES-NON for the purpose of gratuity only.
9. The workman will submit his undertaking that in future he will not commit the misconduct of unauthorised and/or habitual absence from duty.
10. The Agreement is signed by both the parties on 30-06-2009

**Management
Representatives**

1. (S.Saram)
Chief General Manager
Satgram Area

2. (J.S. Sayare)
Dy. Chief Personnel Manager
Satgram Area

3. (U.Aich)
Personnel Manager
Satgram Area

4. (P.K. Sengupta)
Personnel Manager
Nimcha Colliery

**Union
Representatives**

1. (H.I. Soni)
Secy. of KMC Union

2. (Sri Rajesh Harijan)
Concerned Workman

WITNESSES

Name	Designation
U.M.No.	Area/Colliery

Signature

1. Sri Bhawananda Ram 118041	Timber Mazdoor Nimcha
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2. Sri Dharm Harijan 345660	P.Opt. Nimcha
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नई दिल्ली, 4 फरवरी, 2010

का.आ. 620.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय -II दिल्ली के पंचाट (संदर्भ संख्या एम.ए. संख्या 6/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-2-2010 को प्राप्त हुआ था।

[सं. एल-12011/173/2002-आईआर (बी-11)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 4th February, 2010

S.O. 620.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (Ref. No. M AU 0 6/2006) of the Central Government Industrial Tribunal/Labour Court -II Delhi now as shown in the Annexure, in the Industrial dispute between the employee in relation to the management Punjab National Bank and their workman, which was received by the Central Government on 03-02-2010.

[No. L-12011/173/2002-IR(B-II)]

U.S. PANDEY, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II, ROOM
NO. 33, BLOCK -A, KARKARDOOMA COURT
COMPLEX, KARKARDOOMA, DELHI**

Presiding Officer: Satnam Singh M.A. No. 6/2006

Connected with I.D. No. 79/2002

IN THE MATTER OF

Shri J.K. Sawhney (General Secretary)
All India New Bank of India Employees Federation,
(Now named as all India Punjab National Bank
Workers Federation)
Central Office: L Block,
Connaught Circus,
New Delhi-110001

Versus

1. The Chairman and Managing Director,
Punjab National Bank
Head Office, 7, Bhikaji Cama Place,
New Delhi

2. The Senior Manager,
Punjab National Bank
L Block, Connaught Circus,
New Delhi-110001

CORRIGENDUM

- (i) That on page No. 25 of the award in I.D. No. 79/2002 dated 25-05-2006 at para 5 in line 1 instead of the word 'management' it should be 'claimant union'.
- (ii) That on page No. 26 of the award in I.D. No. 79/2002 dated 25-05-2006 at para No. 3 line 2 instead of the word 'as' it should be 'has'.
- (iii) That on page No. 27 of the said award under point No. 3 line 3 instead of the word 'an authorized' it should be 'unauthorized'.

Dated: 27-01-2010

C.K. SINHA, Secy. to the court

नई दिल्ली, 3 फरवरी, 2010

का.आ. 621.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टीएनएमएजी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, /श्रम न्यायालय चैन्नई के पंचाट (संदर्भ संख्या 78/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-2-2010 को प्राप्त हुआ था।

[सं. एल-27012/1/2009-आईआर(एम)]

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 621.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 78/2009) of the Central Government Industrial Tribunal/Labour Court Chennai now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of TANMAG and their workman, which was received by the Central Government on 03-02-2010.

[No. L-27012/1/2009-IR(M)]

KAMAL BAKHRU, Desk Officer
ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

WEDNESDAY, THE 27TH JANUARY, 2010

PRESENT : A.N. JANARDANAN, Presiding Officer

Industrial Dispute No. 78/2009

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes, Act, 1947 (14 of 1947), between the Management of Tamil Nadu Magnesite Ltd., and their Workman).

BETWEEN

The General Secretary : 1 Party/Petitioner Union
Pattali Thozhil Sangam
Arabic Collage Building,
Vellakalpatti Post,
Salem-12

Versus

The Manager : 2nd Party/Respondent
Tamil Nadu Magnesite Ltd.
5/53, Omalur Main Road
Jagir Ammapalayam
salem-636302

APPEARANCE

For the 1st Party/Petitioner M/s G. Pusushothaman
For the 2nd Party /Management Sri M.R. Raghavan

AWARD

The Central Government, Ministry of Labour vide its Order no. L-27012/1/2009-IR(M) dated 21-8-2009 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"whether the action of the management of TANMAG in not promoting Shri P. meghanathan to the post of Supervisor is justified? To what relief the workman is entitled?"

2. After the receipt of Industrial dispute, this Tribunal has numbered it as ID 78/2009. Pursuant to notice under RPAD, both sides entered appearance through their advocates and petitioner filed Claim Statement. Thereafter in spite of several adjournments the case stood not represented on behalf of the Respondent. No Counter Statement was also filed. Eventually the Respondent was called absent and set-exparte.

3. In the Claim Statement, in a nutshell the contentions raised are as follows :

The workman Meghanathan, T.No. 60 was appointed as Electrician Skilled -III under the Respondent on 4-8-1986 and posted in the Rotary Klin Division who secured Competency Certificate in Electrical Supervision in 1993 and "C License" in 1994 stood later promoted as Skilled -II and Skilled -III. He was not promoted to the post of Electrical Supervisor which post was kept vacant for many years for no reasons. There were one post of Supervisor being retirement vacancy and another newly created against which N. Villavan and Vairamani were promoted. The posts of Electrical Supervisor were not classified between Rotary Klin and Shaft Klin Divisions. The work in both was the same. To promote Vairamani the post was classified as one for Rotary Klin and another for Shaft Klin Division which is illegal. While Villavan was given promotion on the basis of date of seniority, Vairamani, junior to Meghanathan was promoted ignoring his seniority reckoned as criterion for promotion. Hence his promotion is illegal. Though the workman had acquired Company Certificate in Electrical Supervisor prior to them, he was not at all considered for promotion for reasons best known to them. Panel of promotion was displayed on the Notice Board only for 2 days denying opportunity to him to challenge non-inclusion of his name which is against the principles of natural justice. Dispute arose since the Management was not responsive to the issue raised. Hence the Respondent is to be directed to promote the workman.

4. The petitioner was examined as WW1 and Ex. W1 to Ex. W14 are marked. No evidence was adduced on the side of the Respondent which is absent and set ex-parte.

5. Points for consideration are:

(i) whether not promoting the workman P. Meghanathan to the post of supervisor is justified.

(ii) To what relief the concerned workman is entitled?

Points (i) and (ii)

6. The case of the petitioner is that he was overlooked in the matter of promotion to the post of Electrical Supervisor ignoring his seniority. According to him, though N. Villavan was promoted on the basis of seniority it is alien to comprehension why Vairamani who was junior to him was promoted ignoring his seniority. Though the very promotion of Villavan was not seriously challenged by the workman, the promotion of Vairamani is much in challenge. According to the petitioner Vairamani is junior to him and seniority is the criterion for promotion. Though the workman claims to have acquired higher qualifications conferring added eligibility for promotion to the post of Electrical Supervisor even before both the promotees, he does not stick on to the fact that by that alone he ought to have been promoted. His serious contention appears against the promotion of Vairamani who is junior to him in the seniority list.

7. As from the materials revealed it is beyond comprehension why the workman stands not promoted though he was senior at least to Sri Vairamani. The promotion of N. Villavan is not so seriously challenged by him. Regarding the higher qualification all the 3 individuals stand on the same footing. It is not shown that acquisition of the higher qualification at an earlier point of time than another could be taken to confer to any one promotion on any priority. Though as contended by the WW1 workman, he had acquired the higher qualification earlier than the other 2 persons, it is not disputed that at the time of the actual promotion none of them had higher qualifications. Further according to WW1, the classification of the post of Electrician for Rotary Kiln Division and Shaft Kiln Division was something not heard of till the present promotion of the two Electricians. The Respondent has been shown to be passive towards the representation made by the workman regarding the promotions made overlooking him. The workman has succeeded in establishing a prima-facie case of his having been ignored in the matter of promotion which is against the principles of natural justice apart from being illegal and irregular. The absence of any plausible explanation from the Management/Respondent which remains absent and is ex-parte, justifying its conduct therefore is only apt to strengthen the case of the petitioner's claim which does not stand shaken by any Cross-Examination. Hence, the petitioner is entitled to an order to be promoted by the Respondent above Vairamani and not above N. Villavan and it is so ordered.

8. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 27th January, 2010)

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the I Party/Petitioner : WW1, Sri P. Meghanathan

For the II Party/Management : None

Documents Marked :—**On the Petitioner's side**

Ex.No.	Date	Description
Ex.W1	30-06-1981	SSLC Certificate
Ex.W2	July/1983	National Trade Certificate
Ex.W3	29-12-1985	Apprenticeship Training Certificate
Ex.W4	06-08-1987	Appointment Order
Ex.W5	03-02-1995	Letter of Meghanathan to Respondent Management with enclosures of Electrical License
Ex.W6	08-06-1998	Promoted as Skilled Grade-II
Ex.W7	07-04-2006	Promoted as Skilled Grade-I
Ex.W8	Feb/2007	Representation of Union to Respondent
Ex.W9	23-02-1997	Letter of Union to Respondent
Ex.W10	05-03-1997	Dispute raised before Assistant Commissioner of Labour (Central)
Ex.W11	05-07-2007	Reply by the Respondent
Ex.W12	26-03-2008	Rejoinder of Petitioner's Union
Ex.W13	21-08-2009	Reference
Ex.W14	16-10-2007	List of Authorised Persons of Tamil Nadu Magnesite Ltd : Works Division

On the Management's side

Ex.No.	Date	Description
	Nil	
	नई दिल्ली, 3 फरवरी, 2010	

का.आ. 622.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जवाहरलाल नेहरू पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.-2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/44/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-2-2010 को प्राप्त हुआ था।

[सं. एल-31011/23/2001-आईआर(एम)]

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 3rd February, 2010

S.O. 622.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/44/2002) of the Central Government Industrial Tribunal/Labour Court No-2, Mumbai now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Jawaharlal Nehru Port

Trust and their workman, which was received by the Central Government on 03-02-2010.

[No. L-31011/23/2001-IR(M)]

KAMAL BAKHRU, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, MUMBAI

Present : A. A. LAD, Presiding Officer

Reference No. CGIT-2/44 of 2002

Employers in Relation to the Management of
Jawaharlal Nehru Port Trust

The Chairman (Admn.) & Secretary,
Jawaharlal Nehru Port Trust,
Admn. Building, Nhava-Seva,
Mumbai 400 707.

1st Party

AND

Their Workman

Shri S.M. Jadhav,
C/o: Nhava Seva Port & General Workers Union,
The Vice President, 2nd floor,
Port Trust Kamgar Sadan,
Nawab Tank Road, Mazagaon,
Mumbai 400 010.

2nd Party

APPEARANCE

For the Employer : Mr. L. L. D'Souza, Representative.

For the Workman : Mr. Jaiprakash Sawant, Representative.

Date of reserving Award: 28-10-2009.

Date of passing of Award: 15-12-2009.

AWARD

1. The matrix of the facts as culled out from the proceedings are as under

2. The Government of India, Ministry of Labour by its Order No.L-31011/23/2001/IR-(M) dated 2nd May, 2002 in exercise of the powers conferred by clause (d) of sub-section(1) and sub section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the Management of Jawaharlal Nehru Port Trust in awarding punishment vide order No.JNP/CM(O)/Estt DA/11112/2000/1008 dated 17-6-2000 to Shri S. M. Jadhav, Technician is legal and justified and proportionate to the misconduct committed ? If not, to what relief the workman is entitled?"

3. To support the subject matter in the reference the Statement of Claim is filed by the concerned Workman at Exhibit 10 making out the case that, he is employee of the 1st Party in the capacity of Technician with effect from 4-5-1990. It is stated that action taken by 1st Party against him by order dated 17th June, 2000 is illegal and not justified. It is stated that, the enquiry was conducted without following

due process of law and natural justice. While conducting said enquiry it is alleged by the 2nd Party that, 1st Party violated the principles of natural justice at every stage. It is stated that, even finding given by the Enquiry Officer is perverse. It is stated that, even penalty imposed on the concerned workman is disproportionate to the charges leveled against the concerned workman. It is stated that, the Management failed to comply with the NPT Rules and Regulations. It is stated that, the enquiry conducted, on which finding was given be declared illegal with observations that, finding is perverse and punishment awarded on the basis of the said faulty enquiry and finding be quashed and set aside with directions to 1st party to allow the concerned workman to claim his usual wages along with other consequential benefits which were affected as a result of penalty.

4. This is disputed by the 1st Party by filing written statement at Exhibit 11 stating and contending that, the enquiry was fair and proper. It is stated that, fair opportunity was given to the concerned workman. It is stated that, charges were of serious nature. It is stated that, after recording evidence by Enquiry Officer, on the basis of the evidence which was before him, he observed concerned workman guilty of the charges leveled against him and misconduct alleged to have been committed by the concerned workman was proved. It is alleged that, the concerned workman allowed driver Vithal Zaskar to take vehicle inside the Port gate, which was not permissible, and parked it near RTGC-7 and climbed there with plastic cans and took diesel of 20 liters and permit him to remove cans and pipes. According to 1st Party said act is nothing but committing theft by Zaskar, a friend of the concerned workman, for which the concerned workman is responsible since all that took place when he was on duty. It is stated that, activities like supply of fuel, billing and hiring charges in connection with the business of providing said vehicle on hire are being managed by the concerned workman. It is alleged that, the concerned workman allowed the said activities and failed to check those and discharge his duties on which charge sheet was served on him and enquiry was conducted. According to 1st Party enquiry was fair and proper and finding not perverse. It is also stated that, the punishment awarded on the concerned workman is just, proper, proportionate and does not require any interference.

5. In view of the above pleadings issues were framed by Ld. Predecessor at Exhibit 12 which I answer as under :

ISSUES

FINDINGS

- | | |
|---|----|
| 1. Whether enquiry held against the workman was vitiated for not following the principles of natural justice? | No |
| 2. Whether the enquiry was not in accordance with the service regulations? | No |

3. Whether the findings recorded against the workman are perverse? No
4. What relief, if any, the workman is entitled to at this stage? No Relief.

REASONS:**ISSUES NOS. 1 TO 3:**

6. The concerned workman alleges that, enquiry was not fair and proper and finding perverse. Whereas case of the 1st Party is that, enquiry was fair and proper and finding not perverse. In support of the same no evidence is led by the 2nd Party. 2nd Party filed purshis, at Exhibit 17, declaring that, he does not want to lead any evidence. On that, 1st party led evidence by filing affidavit of Avinash Tukaram Kalse, in lieu of his examination-in-chief, at Exhibit 20, who states that, he was appointed as Presenting Officer. He states that, one Rao was enquiry Officer. He further states that, the proceedings of the enquiry at pages 17 to 71 of list of documents dated 23-3-2006 were produced by him. He states that, the said were shown to the 2nd Party workman and his representative who participated in the enquiry. He states that, the concerned workman participated in the enquiry along with the Defence representative of his choice Shri Bhushan Path. He states that, charge sheet was served on the concerned workman which was replied by him. He states that, he produced documents which were taken on record and marked M-1 to M-11 before the Enquiry Officer. He states that, on behalf of Management he examined two witnesses viz. Mr. Kawathekar and Mr. Solanki before the Enquiry Officer who were offered for cross-examination of the 2nd Party's representative. He states that, the said witness was cross-examined by Defence representative of the concerned workman. He states that, opportunity was given to the concerned workman as and when he was demanding relief of adjournment. He states that, defence witnesses viz. Thakur, Rajiv Sharma and Mrs. Manisha Jadhav were examined by the concerned workmen as his defence witnesses. He states that, Mrs. Manisha Jadhav was working as Assistant Manager for the 1st Party. He states that, she was looking after the vehicle contracts for JNPT. In the cross this witness states that, page 100 of Exhibit 16 is the documentary evidence about gainful employment of the 2nd Party. He admits that, articles like plastic can, zari were not produced in the enquiry. He admits that, no documentary evidence was shown regarding bringing of vehicle in the premises of the JNPT. He denies that, vehicle No. MH-19 G 1977 entered in the premises of JNPT on 17-1-1999. On that, 1st Party closed the evidence and filed closing purshis at Exhibit 21.

7. 1st Party filed written arguments at Exhibit 22 which was replied by the 2nd Party by repeating the same story by filing written arguments at Exhibit 25.

8. Perused the proceedings and the written arguments filed by both the parties.

9. Here it is to be noted that, the 2nd party has not stepped into the witness box and stated anything about the Enquiry and its defects. Even he is silent on the point

of fairness of the Enquiry and on the findings given by the Enquiry Officer and no specific case is made out by the 2nd Party to observe how Enquiry is not fair and proper and how finding of the Enquiry Officer is perverse. Against that, written arguments submitted by 1st Party reveals that, number of documents were produced by it which were referred by 2nd Party, the concerned workman. In fact burden lies on 2nd Party to show that, how finding is perverse and Enquiry is not fair and proper? Even in the proceedings before the Enquiry Officer 2nd Party chose not to step into the witness box and say something about the incident and even before this Tribunal to say something about the fairness of the Enquiry and perversity of the findings of the Enquiry Officer. On both occasions 2nd Party did not step in the witness box. This itself reveals that, he want to hide himself from the cross of the 1st Party and want to avoid the case of the 1st Party and allegations levelled against him by 1st Party. Though number of documents are referred which reveals that, the vehicle involved in the case entered in the premises of the 1st Party in the presence of the 2nd Party who permitted Zaskar to fill the plastic Can with diesel with plastic pipes and other things which were carried to the said vehicle is not disputed by stepping into witness box. All this reveals that, articles like Plastic cans, pipes etc. were removed from the property of the 1st Party. It is not case of the 2nd Party that, these articles does not belong to 1st party when these articles are involved in the alleged theft of the 1st Party when 2nd Party was on duty to protect property of the 1st Party and when in his presence these articles were removed which were not objected by him, it reveals that, for all this 2nd Party was responsible and for the said theft. On the contrary when in his presence alleged theft took place by which 20 lts. of diesel, cans and pipes were removed question arises what he was doing and when he allowed to happen like that.

10. As far as enquiry is concerned, no specific case is made out by the 2nd Party in what way it can be declared that inquiry is not fair and proper. Besides he is silent on the finding given by the Enquiry Officer. On the contrary 1st Party placed reliance on the enquiry proceedings and the finding given by the Enquiry Officer and filed it with Exhibit 16. All this reveals that, witnesses were examined by the 1st Party and all these witnesses were offered for cross by the 2nd Party. All this reveals that fair opportunity was given to the concerned workman. From all this by any stretch of imagination on going through the enquiry proceedings produced filed with Exhibit 16, it does not lead us to conclude that, enquiry was not fair and proper and finding perverse as alleged by 2nd Party. No evidence is lead or no example is pointed out on which basis, the enquiry can be observed not fair and proper and finding perverse. Nothing is stated about opportunity not given to the concerned workman. Nothing is stated how to observe finding is perverse. Besides one has to note that, 2nd Party did not step in the witness box and even he did

not step in the box before the Enquiry Officer also. All this reveals that, he want to hide himself from the cross of the 1st Party's representative and did not want to expose himself by stepping into the witness box.

11. If consider all this, coupled with the case made by both I conclude that enquiry is fair and proper and finding also not perverse. So I answer this issue accordingly.

ISSUE No. 4

12. It is to be noted that, the concerned workman was punished by 1st Party by giving him punishment of reducing his basic pay from Rs.3320 to Rs.2425 and bringing him in the pay scale of Rs.2435-85-2680-100-3080-120-4760 for a period of three years with immediate effect. It is also ordered that, during the period of reduction, he will not be eligible for any increment or promotion. It was also ordered by the 1st Party that, the said reduction will have the effect of postponing his future increments of pay in other words his pay will be Rs.2510 from the due date of his next increment. It also punished the 2nd Party treating suspension period as R.O.L. without pay and allowances.

13. Taking into consideration the charges levelled against the concerned workman of helping to commit the theft and allowing vehicle to enter in the premises while he was on duty and permit others to commit the theft of articles of the 1st Party, is rather serious offence which may invite capital punishment of dismissal and punishment given for the charge leveled against the concerned workman which is proved is very light one as he is reduced only in low scale so does not require any interference. So I conclude that, the punishment awarded on the concerned workman does not require any interference and such he is not entitled to any relief. So I answer this Issue in the negative.

14. While framing issues at Exhibit 12 my predecessor observed that, those be treated as preliminary issues. But after deciding those nothing survive in the reference to decide.

15. In view of the discussions made hereinabove, I conclude that, the Reference filed by the 2nd party require to be reject. Accordingly I pass the following order :

ORDER

Reference is rejected.

Bombay,
15th December, 2009.

A. A. LAD, Presiding Officer

नई दिल्ली, 4 फरवरी, 2010

का.आ. 623.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. -1, दिल्ली के पंचाट (संदर्भ संख्या

24/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-2-2010 को प्राप्त हुआ था ।

[सं. एल-12011/53/2005-आईआर(बी-II)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 4th February, 2010

S.O. 623.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/2005) of the Central Government Industrial Tribunal/Labour Court No-1, Delhi now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 3-2-2010.

[No. L-12011/53/2005-IR(B-II)]

U. S. PANDEY, Desk Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURT COMPLEX,**

DELHI

I. D. NO. 24/2005

Karambir Singh,
Through General Secretary,
Bank of Baroda Employees Union,
C/o BOB, 4824/24, Ansari Road, Daryaganj,
New Delhi -110002.

Workman

Versus

The Senior Manager,
Bank of Baroda,
Shakti Nagar, Branch,
Delhi.

Management

AWARD

Karambir Singh works as a peon in Bank of Baroda. He remained absent from his duties for a period of 230 days in 2002, without getting leaves sanctioned. His absence was treated as misconduct and a charge sheet was served upon him. His explanation was found not to be satisfactory and an enquiry was instituted. Enquiry Officer submitted his report and the Disciplinary Authority imposed punishment of reduction in the scale by one stage with cumulative effect for one head of misconduct and further reduction by one stage in the scale with cumulative effect for other head of the misconduct. Appeal preferred by him came to be dismissed. He approached the union for redressal of his grievances. Bank of Baroda Employees Union raised the dispute before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-12011/53/2005-IR (B-II), New Delhi, dated 9-8-2005, with following terms :—

“Whether the action of the management of Bank of Baroda in imposing the punishment on Shri Karambir Singh Cash Peon vide order dated 1-10-2003/29-1-2004 is justified and legal? If not, what relief is disputant concerned is entitled to?”

2. Claim statement was filed by Karambir Singh pleading that he was employed as a cash peon in Shakti Nagar Branch of Bank of Baroda in the year 2003. Charge sheet dated 20-1-2003 was served upon him by the Senior Branch Manager alleging therein that he remained absent for 230 days without any prior sanction of leave or without sending any information in that regard and committed an act grossly subversive of discipline which amounted to misconduct under clause 19.5(j) of Bipartite Settlement, 1966 as substituted by clause 5(j) of Memorandum of settlement dated 10th of April 2002. It was further detailed that his act of remaining absent for 230 days without any prior sanction amounted to insubordination to lawful and reasonable orders of higher authority, which is a gross misconduct under clause 19.5 (e) of Bipartite Settlement 1966, as substituted by clause 5(e) of memorandum of settlement dated 10th of April, 2002. He pleads that without seeking his explanation, charge sheet was served and straightaway a departmental enquiry was constituted, which act is violative of clause 19-a of Bipartite Settlement. He submitted his reply and without taking it into consideration, the Enquiry Officer proceeded with the matter in a pre-determined manner. Two witnesses were examined before the Enquiry Officer, who were not having any knowledge about his misconduct. He sought for details in respect of periods of his absence, which was not furnished. The enquiry conducted against him was farce. The Enquiry Officer submitted his report in mechanical manner, without following the principles of natural justice. The Disciplinary Authority awarded punishment of reduction in the scale of pay by two stages with cumulative effect. He filed an appeal and the Appellate Authority dismissed his appeal, vide order dated 29-1-04, without looking into the orders of the Disciplinary Authority. He claims that the charges levelled against him were misconceived. Prayer of setting aside the order of punishment dated 1-10-03 as well as of the Appellate Authority dated 29-1-2004, besides restoration of his salary has been made by him.

3. Contest was given by the management pleading that the appropriate Government has not specified in the order of reference as to validity of which order, out of order dated 1-10-2003 and 29-1-2004, this Tribunal is required to adjudicate. The terms of reference are vague. It is not disputed that Karambir Singh was employed as Cash Peon in Shakti Nagar Branch of the Bank. However, the management feigned ignorance management as to whether Karambir Singh is a member of the Bank of Baroda Employees Union or the Union is registered with Registrar of Trade Unions, Delhi.

4. A claim has been made that enquiry conducted against the workman was in consonance with the principles of natural justice. The Disciplinary Authority awarded punishment vide order dated 1-10-2003 and the appellate Authority dismissed the appeal, vide order dated 29-1-2004, which orders are in confirmation with principles of law. It has been pleaded that ex-post facto sanction of leave does not obliterate misconduct of unauthorized absence. It has further been pleaded that unauthorized absence of workman for a long spell of time amounts to subversive of discipline and insubordination, which are misconduct under Bipartite Settlements. Punishment awarded to the workman is just and fair. A claim has been made that dispute raised by the workman is not tenable.

5. Karambir Singh entered the witness box to testify facts on 1st of June, 2009. He opted not to conclude his statement on that date. His examination-in-chief was deferred. Thereafter Karambir Singh never came forward to testify facts. His testimony remained in -complete. No opportunity was accorded to the management to purify his testimony by an ordeal of cross examination. Under these circumstances facts testified by Karambir Singh nowhere constitute legal evidence. Consequently, testimony of Karambir Singh is discarded from consideration of his claim.

6. Shri C.S.Dahia testified facts on behalf of the claimant, Shri K.C. Hans testified facts on behalf of the management. No other witness was examined by either of the parties.

7. When evidence were closed by the respective parties, the matter was adjourned for arguments. On 11-9-2009 the case was listed for arguments of the parties. None came forward on behalf of the workman or the management to advance arguments in the matter. Consequently it is evident that the parties opted not to raise their submissions. I have perused the record carefully and considered the legal propositions which emerged out of the record. My findings on those propositions are as follows :—

8. Since virus of the enquiry held by the management was as-sailed by the workman, it is expedient to consider as to whether the enquiry conducted by the management was fair and proper. On that proposition testimony of Shri Dahia and K.C.Hans are scanned. Shri Dahia had testified that in the year 2003 Shri Karambir Singh was working as Peon in Shakti Nagar Branch of the Bank. He was a member of Bank of Baroda Employees Union. Union was not having cordial relations with the management in those days. The management searched those cases where members of the union had obtained leave on half pay or without pay, to initiate domestic action against them. Shri Karambir Singh was charge sheeted by the bank, with a view to victimize him. The Enquiry Officer had not called the bank to produce record of leave applications submitted by Karambir Singh, sanction order accorded on those leave applications and regularization of those leaves on loss of pay. After 1999 to 2003 Karambir Singh was on regularized absence on four

spell for 18 days, on loss of pay. Though there were leaves to his credit, yet his absence was regularized for 18 days. on loss of pay. Despite demand those leave applications were not produced before the Enquiry Officer. The Enquiry Officer had not heard submissions made by the defence representative. Enquiry Officer recorded his findings, which were not based on evidence.

9. Shri K. C. Hans admits in his testimony that record relating to absence of Karambir Singh prior to 1999 was not produced before the Enquiry Officer. He was honest enough to admit that the defence representative asked the Enquiry Officer to get record of absence of Karambir Singh produced before him. However, he has not directed the Presenting Officer to produce that record. He admits that Karambir Singh was charge sheeted in relation to his unauthorized absence prior to 1999. He further admits that record of absence of Karambir Singh prior to 1999 was material. He concedes in unequivocal words that non production of that record resulted in violation of grant of proper opportunities to Karambir Singh. It is not disputed by Shri Hans that proper opportunity was not accorded to Karambir Singh to defend himself in the enquiry. He further admits that Karambir Singh produced record of illness of his son for period from 9-8-2000 till 12-8-2000, before the enquiry officer. He projects that punishment was awarded to Karambir Singh on the basis of the charge, which were proved against him.

10. In a domestic enquiry, the enquiry officer is under an obligation to conduct the proceedings in accordance with requirements of statutory provisions or rules. The procedure for departmental enquiry may be laid down by awards or settlements. In private sector, the procedure for holding an enquiry is laid down by standing order framed under the Industrial Employment (Standing Orders) Act, 1940, which standing orders have force of law. Even where no procedure for enquiry has been laid down, the employer is to follow a reasonable procedure for affording an opportunity to the employee to defend himself in the matter. Since the object of departmental enquiry is to find out whether punishment should not be imposed against an employee, the principles of natural justice are applicable to departmental enquiries, even though there may be no rule or statutory provisions governing the procedure of departmental enquiry before such authority. The principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial or quasi judicial authority, while making an order affecting those rights. These principles are now well settled and described thus :

- i. That every person whose civil rights are affected must have a reasonable notice of the case he has to meet.
- ii. That he must have reasonable opportunity of being heard in his defence.
- iii. That the hearing must be by an impartial tribunal, that is, a person who is neither directly nor indirectly a party to the case.

- iv. That the authority must act in good faith, and not arbitrarily but reasonably.

11. To show that the domestic enquiry stood vitiated the workman may highlight the following propositions :

(i) The enquiry is defective on account of violations of principles of natural justice.

- (a) the employee was not informed of the charge against him.
- (b) No evidence was taken in support of the charges.
- (c) The witnesses in support of the charges, have not been examined in the presence of the employee.
- (d) The employee was not given a fair opportunity to cross examine the witnesses examined by the management.
- (e) The employee was not given a fair opportunity to examine witnesses including himself in his defence, if he so wishes, on any relevant matter.
- (f) The enquiry officer has not written a report, giving his findings with reasons.
- (g) The dismissal is founded on a ground which was not included in the charge sheet upon which the enquiry was held.
- (h) The dismissal is founded on the interrogation of the workman, without examining any witnesses in support of the charges.

(ii) The enquiry was not held in accordance with the relevant standing order of the establishment.

(iii) The enquiry officer was biased against the employee.

12. A question emerges as to whether the enquiry conducted by the Enquiry Officer was in consonance with the principles of natural justice. For an answer facts unfolded by Shri K.C.Hans are to be reproduced again. Shri Hans admits that record relating to absence of Karambir Singh prior to 1999 was basis of issuance of charge sheet against him. He further admits that record relating to his absence was not produced by the Presenting Officer before the Enquiry Officer. It is not disputed that Karambir Singh made a request to the Enquiry Officer for production of that record. Despite that request made by the workman, the Enquiry Officer had not bothered to call upon the Presenting Officer to produce that record. Case of Karambir Singh had been that his unauthorized absence were regularized by the bank authorities on loss of pay. Shri Hans admits that the Enquiry Officer failed to accord reasonable opportunity to Karambir Singh to defend himself.

13. When leave of absence of Shri Karambir Singh was regularized by the bank, on loss of pay, one cannot understand as to what persuaded the management to issue a charge sheet against him. By regularization of his spell of absence on loss of pay, the management had condoned

his misconduct. Therefore, by issuance of charge sheet the management had adopted a policy of approbate and reprobate. It was open to the management to elect either to regularize his spell of absence on loss of pay or to proceed against him departmentally. The management validated his absence by regularization on loss of pay and at the same time attempted to reject it by issuance of the charge sheet. The management cannot be allowed to say at one time that his spell of absence stands regularised and at the subsequent time to say that by remaining absent he has committed a misconduct. It is evident that at one juncture the management tried to show generosity towards the workman by way of regularization of his spell of absence and at the another juncture it opted to punish him for those very unauthorized absence, which was regularised on loss of pay. Therefore, the management had adopted policy of approbate and reprobate. By regularization of his spell of absence the management is estopped to treat it as a misconduct, at a subsequent stage. Therefore, action of the management in issuance of charge-sheet to the workman, is found not to be in accordance with law.

14. Even otherwise the Enquiry Officer had not accorded reasonable opportunity to the workman to defend himself, when he declined to get record, relating to his absence, produced before him. The record relating to absence of the workman was the basis of the charge sheet. Without production of that record management was not able to prove the charges against the workman. Workman sought production of that record but the Enquiry Officer opted not to get it produced before him. Thus it is evident that material evidence was not produced before the Enquiry Officer. When the workman took steps for its production the Enquiry Officer gave a cold shoulder to him. It is crystal clear that the Enquiry Officer failed to accord reasonable opportunity to the workman to defend himself.

15. As emerge out of the record, the workman was charged for act grossly subversive of discipline which were prejudicial to the interest of the bank, when he absented himself from his duties for 230 days without prior sanction of his leaves. It amounted to misconduct under clause 19.5(j) of Bipartite Settlement 1966, as substituted by clause 5(j) of memorandum of settlement dated 10-4-2002, projects the management. For those very acts the workman was charged for commission of insubordination to lawful and reasonable orders of his higher authorities. By remaining absent from his duties without any sanction of leave, one cannot be said to have shown insubordination to lawful and reasonable orders of his higher authorities. His act of remaining absent cannot constitute misconduct of insubordination. Therefore, it is further evident that charge sheet served upon the workman is an act of pre concert by the authorities to punish him. All these reasons make me to comment that the enquiry conducted by the management was not fair and proper. The Enquiry Officer violated principles of natural justice and his findings cannot be allowed to sustain.

16. Order dated 1-10-03 passed by the Disciplinary Authority was based on the findings of the Enquiry Officer.

Hence the said order also stands demolished. The order of the Appellate Authority, dismissing his appeal on 29.1-2004 also goes to dooms. Therefore, it is concluded that the enquiry conducted by the management against the workman was not in consonance with the principles of natural justice and cannot be affirmed. Order of the Disciplinary Authority and that of the Appellate Authority are also raised to the ground.

17. When enquiry conducted by the management is found to be defective, the Tribunal can exercise jurisdiction of granting permission to the employer to satisfy it on the facts that the order of punishment is in proportion to the misconduct committed by the employee. Question for consideration comes as to whether an obligation is fastened to the Tribunal to call upon the employer suo moto to prove misconduct of the workman. Such proposition was raised before the Apex Court in *Shanibhagath Goyal* [1983 (11) LLJ 145]. The Apex Court ruled that if the enquiry is found defective, the Tribunal will have to give the employer an opportunity to produce additional evidence and also give a similar opportunity to the employer to lead evidence contra, in case request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial comes to an end. The Court ordained that in the absence of pleadings in written statement to the effect that it wants to prove misconduct of the workman by adducing evidence or want of request during the pendency of the proceedings, no situation arises for the Tribunal to advise the employer to lead evidence for proof of misconduct of the workman. Reference can also be made to the decision of the apex Court in *Lakshmiddevamma* [2001 (2) LLJ 199]. In view of the law laid by the Apex Court, the Tribunal is duty bound to accord opportunity to the management to lead evidence to prove misconduct of the workman, if such a request is made either in the pleadings or during the course of proceedings and not otherwise.

18. Neither in its written statement nor during the course of proceedings any request was made by the management to allow it to lead evidence to prove misconduct of the workman, if the enquiry is found to be defective. When no such request was made, the Tribunal cannot accord such an opportunity to the management suo moto, when enquiry is found to be defective.

19. The enquiry conducted against the workman was found not be in consonance with the principles of natural justice. Therefore, the enquiry report and orders passed by the Disciplinary Authority as well as Appellate Authority are non est. The order of punishment awarded by the Disciplinary Authority and its confirmation by the Appellate Authority loses its efficacy. The Management is under an obligation to undone the effect of order of punishment and restore pay of the workman to the stage in the time scale as if no punishment was ever awarded to him. An Award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 22-1-2010

नई दिल्ली, 4 फरवरी, 2010

का. आ. 624.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंध में निरोधकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 9/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-02-2010 को प्राप्त हुआ था।

[सं. एल-12012/181/2003-आई.आर.(बी-II)]

यू. एस. पाण्डेय, डेस्क अधिकारी

New Delhi, the 4th February, 2010

S. O. 624.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 9/2004) of the Central Government Industrial Tribunal/Labour Court-I, Delhi, now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Dena Bank and their workman, which was received by the Central Government on 03-02-2010.

[No. L-12012/181/2003-IR(B-II)]

U. S. PANDEY, Desk Officer

ANNEXURE

**BEFORE DR. R. K. SHUKLA, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOMA COURT COMPLEX,
DELHI**

Industrial Dispute No. 9/2004

Sh. Ganga Singh Bhandari,
S/o Shri Mahinder Singh,
R/o 203/5, Kardampur,
Shahdara, Delhi.

...Workman

Versus

The Regional Manager,
Dena Bank, Regional Office, 18/7-8,
Arya Samaj Road, Kirti Bagh,
New Delhi-110005.

...Management

AWARD

Ganga Singh Bhandari was employed as a personal driver by R.B.L. Mathur, Senior Manager, Dena Bank. When Shri Mathur was transferred, his services were disengaged on 4-10-2002. Shri Bhandari raised a dispute for his reinstatement. Since conciliation proceedings failed, appropriate Government referred the dispute to this Tribunal for adjudication, vide Order No. L-12012/181/2003-IR(B-II), New Delhi, dated 5-1-2004, with the following terms:

"Whether the demand of Shri Ganga Singh Bhandari, Personal Driver of the officer of Dena Bank, for reinstatement w.e.f. 4-10-2002 is just, fair and legal? If yes to what relief the workman is entitled to and from what date?"

2. Claimant filed his claim statement pleading therein that he was appointed as personal driver w.e.f. 18th of May, 93 on monthly salary of Rs.1200, payable by Deputy General Manager. He was paid his wages out of the consolidated fund of the bank, through vouchers. He served the management till 3-10-2002. His last drawn wages were Rs.3300 PM. On 4-10-2002 his services were terminated without any reason. Services of Prehlad Singh Rawat, Raghubar Singh Rawat, Jasbir, Uttam Singh Bhandari and Vishal Singh Makhloga, who were working as personal drivers with the officers of the bank, were regularized in terms of letter No. R/1905 dated 15-12-1989. He is similarly placed as the aforesaid drivers were placed. After his retrenchment Shri G.S.Negi was appointed as personal driver, which act of the management is arbitrary and illegal. He served a notice of demand on 9-10-02 seeking his reinstatement. He raised a dispute before the Conciliation Officer, but conciliation proceedings failed. At the time of his retrenchment neither notice nor pay in lieu thereof and retrenchment compensation was paid to him. Termination of his services amounts to retrenchment and is violative of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (in short the Act). He claims reinstatement in service with continuity and full back wages.

3. Management gave contest to the claim pleading that the appropriate Government had referred the dispute without application of mind. Since the claimant was working as a personal driver with R.B.L. Mathur, Senior Manager, there existed no relationship of employer and employee between the parties. Under these circumstances there was no industrial dispute which could be referred for adjudication. It has been denied that the claimant was appointed by the bank at a monthly wages of Rs.1200. It has further been denied that his wages were paid by the management bank. It is also denied that his last drawn wages were Rs.3300 PM. It is disputed that he worked with the bank till 3-10-2002. Claimant was engaged by Sri Mathur who paid his salary out of his pocket. It has been pleaded that the management bank had its recruitment policy and claimant was not recruited in accordance with that policy. The claim put forward is devoid of merits, pleads the management.

4. Ganga Singh Bhandari tendered his affidavit to substantiate his claim. He was cross examined at length on behalf of the management. Shri Shubhajyoti Mazumdar entered the witness box to project the stand of the management. No other witness was examined by either of the parties.

5. Arguments were heard at the bar. Shri R.K. Shukla, authorized representative, advanced arguments on behalf of the claimant. Shri Ajok Kumar Sahai, authorized representative, raised his submissions on behalf of the management. I have given my careful consideration to the arguments advanced at the bar and cautiously perceived

the record. My findings on issues involved in the controversy are as follows:

6. Though in his affidavit Ganga Singh Bhandari swears that he was appointed by the management bank on 18-5-93 as a driver at a monthly salary of Rs. 1200, yet he admits in his cross examination that he was engaged as a personal driver of Shri A. B. Iyer, Deputy Zonal Manager of the bank. He concedes that he was not an employee of the bank. He further concedes that his attendance was not marked in attendance register meant for bank employees. He also admits that Deputy Zonal Manager was entitled to facility of a vehicle being provided by the bank. He went on to admit that Deputy Zonal Manager was entitled to reimbursement of payment made to personal driver towards his salary. Admission of above facts castigates the claim projected by Shri Ganga Singh.

7. Facts unfolded by Shri Subhajyoti Mazumdar also dispels the claim of Ganga Singh Bhandari. He declares that Ganga Singh Bhandari was never engaged by Dena Bank. He deposes that the claimant was personal driver of Shri R.B.L. Mathur, Senior Manager of the Bank. Shri Mathur used to pay wages to the claimant, out of his own pocket. It was not within the knowledge of the bank as to from which date Shri Bhandari was employed and till what date he worked with Shri Mathur. On 9-10-2002 the claimant served a notice of demand on the bank, copy of which is Ex.MW1/1. Reply dated 12-11-2002 was sent, detailing that there was no employer and employee relationship between the claimant and the bank. Since claimant was not an employee of the bank, hence there was no occasion for the bank to terminate his services.

8. During the course of his cross examination Shri Mazumdar admits that letter Ex.MW1/W1 was written by the Chief Manager to the Chief Manager, Personnel Department of the Bank. When contents of Ex.MW1/W1 are perused, it came to light that the claimant was engaged as personal driver by the Deputy General Manager. A request was made by the claimant for regularisation of his services. Chief Manager recommended his request for regularization. Therefore, out of the contents of this document it is emerging that the claimant was working as a personal driver with Deputy General Manager of the bank and Bank authorities were in favour of his regularization in the services of the bank. Ex.MW 1/2 and Ex.MW 1/W3 also project those very facts. Ex.MW 1/4 is the next letter wherein particulars of Ganga Singh and Bishan Singh were forwarded to the authorities for their regularization. Ex.MW1/W5 is a payment voucher, which projects that certain amount was reimbursed to Shri R.B.L. Mathur for payments made to his personal driver, namely, Shri Ganga Singh. Therefore, this document also gives confirmation to the facts that Ganga Singh was working as a personal driver with Sh.R.B.L.Mathur, the Officer of the Bank.

9. Shri Mazumdar went on to depose that Shri R.B.L. Mathur was entitled for staff car facility. A vehicle was provided to Mr. Mathur by the bank, which

vehicle was being driven by Shri Ganga Singh. Whatever wages were paid to Shri Ganga Singh by Shri Mathur, that money was being reimbursed to Shri Mathur by the Bank. There were 3-4 staff car drivers in the branch of the bank. Bank had written to the higher authorities for regularization of services of Shri Ganga Singh and Bishan Singh. He further concedes that services of Prehlad Singh Rawat, Raghbir Singh Rawat, Jasbir Singh, Uttam Singh Bhandari and Vishal Singh Makhloga, who were working as personal drivers, were regularised. However, he explained that he was unable to unfold whether the aforesaid persons were serving for a longer period than Ganga Singh and Bishan Singh. Therefore, out of facts projected by the Claimant as well as Shri Mazumdar, it is evident that the claimant was employed as a personal driver with R.B.L. Mathur and there were no employer and employee relationship between him and the management bank.

10. When claimant was employed as a personal driver by Shri Mathur, expenses incurred the latter on wages of the former were being reimbursed by the bank. In that situation the claimant was having no nexus with the management bank. The mere fact that he used to drive the vehicle of the bank for Shri R. B. L. Sharma, could not establish any relationship of employer and employee between the claimant and the management bank. With such a proposition Apex Court was confronted in Ghulam Dustgir, (AIR 1978 SC 481). In that case Area Manager of nationalized bank was being given personal allowance by the bank to enable him to employ personal driver of his own. The jeep which was being driven by the driver belonged to the bank. Its petrol and oil requirements and maintenance were within the financial responsibility of the bank. There was no evidence to the effect that the driver was employed by the bank and was under directions and control of the bank. There was also no evidence that his salary was paid by the bank. Considering all these aspects the Apex Court ruled that there was no case of camouflage and sham contract. When driver was engaged by the Area Manager. There existed no control and supervision over the driver by the bank, which fact negated existence of relationship of employer and employee between the parties. Nothing unusual was noticed by the Apex Court when the bank gave allowance to its officer for engaging services of a personal driver. The said precedent is squarely applicable to the present controversy.

11. Claimant had placed his reliance on a precedent in Ghanshyam [JT 2001] (Suppl.) SC 229] wherein the Apex Court was concerned with the powers contained in section 17-B of the Act. It was ruled therein that section 17-B of the Act does not preclude the High Courts or the Apex Court under articles 226 and 136 of the Constitution from passing appropriate interlocutory orders, having regard to the facts and circumstances of the case. The court may, depending on the facts of a case, direct payment of full wages under section 17-B of the Act only by the employer of the workman. The question whether the workman is entitled to the full wages last drawn or full salary, which

he would be entitled to in the event of reinstatement while the award is under challenge in the High Court or Apex Court, depends upon the terms of the orders passed by the court, which has to be determined on the interpretation of the order granting relief.

12. In that matter Ghanshyam was engaged as personal driver by the Regional Manager of the Dena Bank at Lucknow. At the end of tenure of the Regional Manager, services of Ghanshyam were terminated w.e.f. August, 1990. He raised an industrial dispute and the industrial adjudicator passed an award holding that Ghanshyam was driver of the bank, termination of his services was uncalled for, hence he was ordered to be reinstated with back wages. The correctness of the award was assailed before the High Court of Judicature at Allahabad. Vide order dated 4-5-2000 High Court directed that Ghanshyam be paid wages in regular pay scale w.e.f. December, 6, 1996. Within one month from the date of production of the certified copy of that order, failing which the appellant was directed to appear before the court on 4-7-2001. The said order was under challenge before the Apex Court. The Apex Court ruled that by the interim order High Court did not grant relief in terms of section 17-B, nay there is reference to that section in the order. Therefore, question of payment of "full wages last drawn" to Ghanshyam does not arise. Consequently it is evident that the precedent relied by the claimant is not applicable to the present controversy.

13. Ghomarbhai Harjibhai Rabari [2005 (2) LLJ 475] presents a situation when a personal driver engaged by the Executive of Bank of Baroda was held to be an employee of the bank. In that case, the driver produced three vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the bank. The bank could not rebut those vouchers. Signatures of the driver were also there on the register maintained by the bank. These facts led the Apex Court to conclude that relationship of employer and employee existed between the driver and the bank.

14. Here in the present controversy, the claimant could not show that his wages were paid by the bank or his name appeared in the attendance register or payment scroll maintained by the bank. On the other hand, the claimant moved an application to seek a job with Shri R.B.L. Mathur to serve as personal driver. Hence precedent in Ghulam Dastgir (supra) is applicable to this case. Relying the said precedent and on consideration of the facts of the present controversy it is concluded that the claimant was working as a personal driver to Shri R.B.L. Mathur, D.G.M. of the bank. There existed no relationship of employer and employee between the claimant and the management bank.

15. Since there existed no relationship of employer and employee between the claimant and the bank, termination of services of the claimant by Shri R.B.L.

Mathur, nowhere violates the provisions of the Act. It cannot be said that the claimant was a industrial employee and a workman within the meaning of clause (s) of section 2 of the Act. It cannot be said that dispensation of his services amounted to retrenchment within the meaning of clause (oo) of section 2 of the Act. Under these circumstances provisions of section 25-F, 25-G and 25-H of the Act nowhere come for rescue of the claimant. He is not entitled to any relief from the bank.

16. Subhijoti Mazumdar admits that services of Prehlad Singh Rawat, Raghubir Singh Rawat, Jasbir, Uttam Singh Bhandari and Vishal Singh Makhloga, who were working as personal drivers, were regularized by the bank. However, he could not project as to for what period, the aforesaid drivers rendered their services as personal driver of the officers of the bank. The claimant could not show that his case was on the same footing as that of Prehlad Singh Rawat, Raghubir Singh Rawat, Jasbir, Uttam Singh Bhandari and Vishal Singh Makhloga. Question for consideration comes as to whether the claimant is entitled to claim equal treatment as accorded to the aforesaid drivers. It is not disputed by the management that case of the claimant was also referred to higher authorities for regularization. The higher authorities declined to consider the case of the claimant for regularization in the services of the bank. Therefore, it was for the claimant to project that he stood on equal footings with the aforesaid drivers, to claim equal treatment.

17. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated a like. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments, (b) promotions, (c) termination of employment, (d) and matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

18. Fundamental rights guaranteed by article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of

discretion. Classification is the recognition of the relations, and in making it the government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

19. Concept of equality guaranteed by article 16 of the Constitution is something more than formal equality and enables the underprivileged groups to have a fair share by having more than equal chance and enables the state to give favoured treatment to those groups by achieving real equality with reference to social needs. 'Protection discrimination' enabled the state to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time. Therefore classification based on experience, in relation to time for which personal drivers employed by the officers of the bank had served, has a reasonable differentia.

20. To claim equality with the aforesaid drivers it was for the claimant to show that he stood on equal footing with them. Not even an iota of fact has been brought over the record by the claimant to show that he was at par with the aforesaid personal drivers, whose services were regularized by the bank. In such a situation it cannot be said that the claimant was discriminated when his services were not regularised by the bank. Even otherwise regularization of the services of the claimant cannot be ordered, since it would amount to back door entry in the government job. Law to this effect was laid by the Apex Court in Uma Devi [2006 (4) SCC 1]. In view of these facts it is evident that he is not entitled for regularization in the services of the bank on the ground of parity with the aforesaid personal drivers, whose services were regularized. Relief.

21. Since the claimant was not an employee of the management bank, he cannot put forward any claim against it. He is not entitled to any relief much less the relief of reinstatement in service. His claim is liable to be discarded and the same is, therefore, rejected. Award is accordingly passed. It be sent to the appropriate Government for its publication.

Dated: 14-01-2010

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 5 फरवरी, 2010

का. आ. 625.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं स्वतंत्र ऑफ प्लानिंग एण्ड एग्रीकल्चर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 38/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-2-2010 को प्राप्त हुआ था।

[सं. एल-42012/289/2003-आई.आर. (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 5th February, 2010

S. O. 625.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 38/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi, as shown in the Annexure, in the Industrial Dispute between the management of School of Planning and Architecture, and their workmen, which was received by the Central Government on 5-2-2010.

[No. I-42012/289-2003-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURT COMPLEX, DELHI

I. D. No. 38/2004

Satish Kumar Saini

R/o UPLF 8/440,

Triokpuri, Delhi-110091

...Workman

Versus

The Director,

National School of Planning and

Architecture, I.T.O., New Delhi-110001. ...Management

AWARD

School of Planning and Architecture (hereinafter referred to as the school) a deemed University, runs a student hostel at its Maharani Bagh Campus. Lodging and boarding are provided to the students in the said hostel. Mess is being run by hostel mess committee. The Government of India had approved creation of post of four cooks and ten bearers for the hostel mess, who are to be treated as the employees of hostel mess committee. In order to meet the requirements mess committee engaged Satish Kumar Saini alongwith five others, as a stop gap arrangement on 27-7-90 on a consolidated salary of Rs.1000 PM. He was engaged as a helping hand for washing utensils. On 29-9-2000 he was found absent from his duties. Around midnight he was found lying unconscious in a pool of blood at the back of mess premises. He was under influence of alcohol. He was removed to hospital for treatment. A sum of Rs. 10000 was given to him purely on humanitarian ground by the mess

committee for his treatment. After his discharge from the hospital, he did not report for his duty. Since he was declared deemed to have abandoned the job, he raised a dispute before the Conciliation Officer, for his reinstatement. Since conciliation proceedings failed, the appropriate Government referred dispute to this Tribunal for adjudication, vide order No.L-420 I2/289/2003-IR(CM-II), New Delhi dated 17-8-04, with following terms :—

“Whether the demand of Satish Kumar Saini for reinstatement of his service on the post of Mess bearer w.e.f. 30-9-2000 in the establishment of the Director, National School of Architecture, New Delhi, is legal and justified? If yes, to what relief the workman is entitled and from which date?”

2. In his claim statement, the workman pleads that he was appointed as Helper-cum-Cook on 1st of March, 1989. On account of his hard work, he was promoted as Mess bearer. No appointment letter was issued to him in spite of repeated requests. He was forced to work without security of his job. He developed tension and fell from his boundary wall and received injuries. He was removed to AIIMS wherein he remained admitted from 30-9-2000 till 20-11-2000. He had spent a sum of Rs. 47014.90 p on his treatment. After his discharge from the hospital, he reported for his duty on 4th of May, 2001. His monthly salary was Rs. 4538. Reimbursement of his medical expenses was refused. His services were terminated on 1st of October, 2001, without any notice, or pay in lieu thereof. No retrenchment compensation was paid to him. He sent a notice of demand dated 11-2-2002 requesting payment of his wages and benefits. He seeks his reinstatement with continuity and full back wages alongwith reimbursement of medical expenses.

3. The management disputes the claim pleading that the School is an educational institution run by a society registered under the Societies Registration Act. It is being run without any motive of profit and cannot be termed as an “industry” within the meaning of clause (j) of section 2 of the Industrial Disputes Act, 1947 (in short the Act). It has further been pleaded that the claimant was engaged by student mess committee and there existed no relationship of employer and employee between the parties. He was engaged temporarily on 27-7-90 as a stop gap arrangement, on a consolidated salary of Rs. 1000 per month. He absented himself from his duties on 29-9-2000. He was found lying unconscious in a pool of blood and was removed to hospital. A sum of Rs. 10000 was given to him for his treatment on purely humanitarian grounds. After his discharge from the hospital he did not report for his duties. He was deemed to have abandoned his duties. His claim of reinstatement with consequential benefits is liable to be dismissed.

4. On pleadings of the parties the following issues were settled by my learned predecessor :

1. Whether the workman is an employee of the management as claimed?

2. Whether the petition is bad for misjoinder and non joinder of parties as alleged in para 3 of the written statement ?

3. Whether there exists relationship of employer and employee between the parties?

4. Whether the management is an “industry”?

5. Whether the workman is entitled to the relief claimed?

5. Workman examined himself to substantiate his claim. Shri Virender Kumar Paul was examined on behalf of the management. No other witness was examined by either of the parties.

6. Arguments were heard at the bar. Shri B. K. Paul, authorised representative, advanced arguments on behalf of the workman. Ms. Deepa Rai, authorised representative, raised her submissions on behalf of the management. Written submissions are filed on behalf of the parties. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :—

Issue No. 1, 2 and 3

7. Virender Kumar Paul swears in his affidavit that a student hostel is being run at Maharani Bagh Campus of the School, wherein students are provided lodging and boarding. The mess of the hostel is being run by student hostel mess committee comprising of hostel warden, deputy warden and elected body of the students union. The Ministry of Human Resources Development, Government of India, provides the School with subsidy by way of financial grants to benefit the students. The Ministry determines number of the employees that can be employed in the mess. Vide order dated 26-3-90, which is EX.MW 1/2 four posts of cook and ten posts of bearer were created by the Government for the hostel mess. It was further clarified that these persons holding these posts would not be treated as employees of the School. In order to fill in the requirements of the hostel mess, the mess committee engaged claimant, alongwith five others as an interim stop gap arrangement, since it could not employ more than 14 employees as sanctioned by the Central Government. He was engaged merely as a helping hand for washing of utensils, at a consolidated salary of Rs. 1000. Sanction order dated 27-7-90 is Ex.MW1/3. Various orders, on the strength of which salary of the claimant was revised are Ex.MW1/4A to Ex.MW1/4F. He admits that order Ex.MW1/W1 was issued by him.

8. Contra to facts testified by Shri Paul, the workman swears that he was in the employment of the School since 1st of March, 1989 as Helper-cum-/Cook. He was promoted as mess bearer but no appointment letter was issued to him. He protested against the said act of the management and his harassment started. He presents that he was working with the School at monthly salary of Rs. 4538, when his services were dispensed with.

9. For adjudication of claim put forward by the workman, facts testified by the aforesaid two witnesses are appreciated. It came to light that the claimant had laid emphasis on document proved over the record by the management. Ex.MW 1/2 is addressed to the Registrar of the School, wherein it has been mentioned that four posts of cook and ten posts of bearer were sanctioned by the Government of India. It was detailed therein that persons appointed against those posts will be treated as employees of students' mess and not of the school. However, one of the conditions detailed in the said order makes it clear that the said stipulation is meaningless. It has been provided in Ex.MW1/2 that the School will provide 75% of the expenses to the student mess out of budget provision under the head 'Mess subsidy to hostel' and remaining 25% will be met by the hostlers, who are members of the mess. Therefore it is evident that it was the School who had control on economic subsistence and employment of the employees of the mess committee. Ex.MW1/3 makes it clear that Registrar of the School had conveyed sanction of the Competent Authority for employment of six daily wage staff at consolidated salary of Rs. 1000 per month to meet immediate requirement of hostel mess. 75% of total expenditure was to be met from the funds of the School and 25% from hostel funds. Ex.MW1/4A to Ex.MW1/4F are various sanction orders of the Competent Authority conveyed to the Warden of the hostel regarding revision of salary of the claimant and others, who were employed to meet immediate requirement of the hostel mess. Out of these documents it surfaced over the record that the claimant was engaged by the hostel mess committee when sanction for appointment to meet the requirement of hostel mess was accorded by the Competent Authority of the School. The said sanction was conveyed by the Registrar of the School.

10. Question for consideration comes as to whether Satish Kumar Saini was a workman. Definition of word "workman" is given in clause (s) of Section 2 of the Act in following terms :

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or

- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

11. Definition of workman contains three limbs. First limb of the definition gives statutory meaning of the word and determines a workman by reference to a person (including an apprentice) employed in an industry to do any manual, unskilled, skilled, technical, operative, clerical or supervisory work for hire or reward. The second limb is designed to include a person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment in connection with an industrial dispute, or (iii) whose dismissal, discharge or retrenchment has led to an industrial dispute, within the ambit of workman. However, the third part of the definition excludes the categories of persons specified in clause (i) to (iv) from the expression "workman". The definition does not state that a person, in order to be a workman should have been employed in a substantive capacity or on temporary basis in the first instance or after he is found suitable for the job after a period of probation. In other words, every person employed in an Industry irrespective of his status - temporary, permanent or probationary would be a workman. The expression "employed" has at least two known connotations, that is, a relationship brought by express or implied contract of service in which employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind, as agreed between them or statutorily provided. It discloses a relationship of command and obedience. Reference can be made to the precedent in Food Corporation of India's case [1985 (2) LLJ 4].

12. A distinction is also drawn between "contract for service" and "contract of service". In one case the master can order or require what is to be done, while in the other case he cannot only order or require what is to be done, but how itself it shall be done. The distinction is - under a contract of service, a man is employed as a part of the business and work is done as an integral part of the business, while under contract for service, his work, although done for the business, is not integrated into it but is only assessor to it. But the test of being a servant does not rest nowadays on submissions to orders. It depends on whether person is part and parcel of the organization.

13. Mere existence for a contract of service would not confer a relationship of employer and employee until the employer is in a position to control the work of the

employee. A master is one who not only prescribes to the workman the end of his work, but directs or at any moment may direct the means also, or, as it has been put, "retains the power of controlling the work", a servant is a person who is subject to the command of his master as to the manner in which he shall do his work. An independent contractor is one who undertakes to produce a given result but so that in the actual execution of the work he is not under the order or control of the person for whom he does it, and may use his own discretion in things not specified before hand.

14. Identification mark of servant is that he should be under the control or supervision of the employer in respect of details of his work. It is element of control of work that distinguishes the relationship of master and servant may factors have a bearing on the result. Who is the pay master, who can dismiss, how long the service lasts, all have to be kept in mind, to adjudicate relationship of employer and employee between the parties. Here in the case sanction of the Competent Authority of the School was accorded for appointment of the claimant as a bearer. His wages were revised from time to time by the Competent Authority of the School and orders in that regard were conveyed by the Registrar. His work was being supervised by the Warden of the hostel, who was overall in charge of the hostel mess. It was the Warden who could have dismissed him or decide the period of his continuance in the service. Consequently it is emerging over the record that it was the School who exercised control or supervision over the employment of the claimant. 75% of his wages were being paid by the School out of subsidiary granted by the Government, while 25% was being paid by the members of the mess, to whom services were being rendered. His continuance in the service was under the command of the School. All these facts are sufficient to conclude that there existed relationship of employer and employee between the claimant and the management. The issues are, therefore, answered in favour of the claimant.

Issue No. 4

15. Management pleads that it is an educational institution without any motive of profit. A claim has been made that it can not be termed as an "industry" within the meaning of clause (i) of section 2 of the Act. He projects that on the very proposition Shri Virender Kumr Paul had testified facts. Consequently it become expedient to know as to whether the management is an industry or not. For an answer, the definition of "industry" as enacted by clause (j) of section 2 of the Act is to be considered. Definition of word "Industry", provided in the aforesaid clause, is reproduced thus :

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, services, employment, handicraft, or industrial occupation or avocation of workmen.

16. The definition of "Industry" is both exhaustive and inclusive. It is in two parts. The first part says that it

"means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is design to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

17. Gloss was put on the definition of word "industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "Industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test by reference to characteristics regarded as essential for constituting an activity as an "Industry". Various cases would show that the Apex Court have been guided more by empirical rather than a strictly analytical approach. Most of the decisions have centred around the expression "undertaking" used in the definition. In Bangalore Water Supply and Sewerage Board (1978 Lab. IC. 778) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry", as enacted by clause (j) of section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision handed down by Justice Krishna Iyer, which are extracted thus :

"I. "Industry" as defined in S. 2(j) and explained in Banerji (AIR 1953 S.C. 58) has a wide import.

(a) Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or foods) prima facie, there is an "industry" in that enterprise.

- (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
 - (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
 - (d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.
- II. Although Section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in *Banerjee* and in this judgment, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures, "analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

- (a) The consequences are (i) professions, (ii) clubs (iii) education institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of section (j).
- (b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify for exemption if in simple ventures, substantially, and going

by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non employee character of the unit.

- (c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

- (a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the *University of Delhi* case (AIR 1963 S.C. 1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur* (AIR 1960 Sc. 675) will be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.
- (b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Govt. or statutory bodies.
- (c) Even in department discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j)
- (d) Constitutional and competently enacted legislative provisions may remove from the scope of the Act categories which otherwise may be covered thereby.

- V. We overrule *Safdarjung* (AIR.1970 SC.1407), *Solicitors' case* (AIR 1962 SC 1080), *Gymkhana* (AIR 1968 SC.554), *Delhi University* (AIR 1963 SC 1873), *Dhanrajgirji Hospital* (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the *Hospital Mazdoor Sabha* (AIR 1960 SC 610) is hereby rehabilitated."

18. Principles laid down in *Bangalore Water Supply & Sewerage Board* (supra) holds ground. Therefore, the controversy raised in the present matter will be adjudicated in view of the law laid by the Apex Court in the above precedent *Shri Virender Kumar Paul* swears in his affidavit that the school is a deemed University. As an educational institution it has a students hostel at its *Maharani Bagh Campus*, where students are provided lodging and boarding. Mess of the hostel is being run by students' hostel mess committee, comprising of Hostel Warden and an elected body of the Student Union. The said hostel mess committee is not a part of the establishment of the School. He admits that Ministry of Human Resources Development, Government of India provides subsidy by way of financial grants through the School to benefit the students. The Ministry of Finance determines the number of employees that can be employed in the mess. The Ministry had issued clear instructions that the employees engaged by the Students Hostel Mess Committee would not be treated as employees of School and they would be employees of the said committee only. On 26-3-90 the Ministry has approved creation of posts of four cooks and ten bearers for the students' hostel mess. Relying the aforesaid evidence of Mr. Paul the management projects that neither the School nor hotel mess committee is an 'Industry', within the meaning of clause (j) of Section 2 of the Act.

19. The question whether the activity of running an educational Institution would fall within the definition of an 'Industry' was answered by the Apex Court in *Corporation of City of Nagpur* [1960(1) LLJ 523] in an affirmative manner. The reason given for the proposition was as to whether that service can equally be done by a private person. In *University of Delhi* [1963 (II) LLJ 335] the Apex Court ruled that University of Delhi was not an 'Industry' for two reasons viz (i) the teachers are not workmen, (ii) the work of the University could not be assimilated to the position of any 'trade', 'business' or 'calling' or 'services' within the meaning of clause (j) of Section 2 of the Act. But in *Bangalore Water Supply and Sewerage Board* (supra) a majority of seven judges bench held that the test is not the predominant number of employees entitled to enjoy the benefits of the Act but the true test is the predeterminate nature of the activity. In the case of the University or an Educational Institution, the nature of the activity is *ex hypothesi*. Education which being a service to the community is an 'Industry'. Besides there may be any number of activities of an educational institution, such as a printing press, a transport department

and clerical and menial staff etc. which may be severable from the teaching activities of the University. These operations viewed separately or collectively, by themselves, may be treated as an 'Industry'. On these reasonings the Apex Court observed that the University of Delhi case was wrongly decided and education in its institutional form is an 'Industry'.

20. In *Baroda Borough Municipality* [1957(1) LLJ 8] the Apex Court held that though municipal activity could not be truly regarded as business or trade, yet it would fall within the scope of expression 'undertaking'. Non-profit undertaking of the municipality were included in the concept of 'Industry' even if there is no private enterprise. The court reiterated that branches of work that can be regarded as analogous to carrying out of a trade or business would fall within the meaning of 'Industry' in clause (j) of Section 2 of the Act. In reaching the decision, the Apex Court relied precedent in *D.N.Banerji* (supra) and ruled that it would be sufficient that the activity is an undertaking' analogous to the carrying on of a trade or business and involves cooperation between the employers and employees. This result was reached by extending the meaning of the expression 'undertaking' to cover adventures not strictly trade or business but 'objects vary similar'. Reference can also be made to *Madras Gymkhana Club Employees Union* (supra).

21. In *Indian Standard Institute* [1966(1) LLJ 33] the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In *Bangalore Water Supply and Sewerage Board* (supra), the Apex Court laid down that an activity systematically or habitually undertaken for the production or distribution of goods for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An 'Industry' thus was said to involve cooperation between the employer and employee for the object of satisfying material human needs but not for oneself nor for pleasure nor necessity for profit. Lack of business and profit motive or capital investment would not take out an activity from the sweep of 'Industry', if other conditions are satisfied. It is the activity in question which attracts the definition and the absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into "industry" if other tests are not satisfied.

22. As emerge out of the facts testified by *Shri Virender Kumar Paul* a hostel is being run at *Maharani Bagh Campus* of the school where students are provided lodging and boarding. In that hostel a mess is being run, wherein cooks and bearers serve. The systematic activity is there when hostel mess Committee employee cooks and

bearers for providing material services to the students, who are lodged in the hostel. Mess Committee comprises of hostel warden, Deputy Warden and elected body of Student Union. Hostel Warden is the overall in charge of the said Mess Committee. Ministry of Human Resources and Development, Government of India, provides financial grants to the School to run the said hostel. Consequently it is evident that systematic activities are being carried on with the cooperation of hostel mess committee and the employees employed in the mess to provide material services to the students staying therein. Therefore, an undertaking is being run in Maharani Bagh Hostel of the school, which is analogous to activities of an "Industry". Maharani Bagh Hostel is a branch of the School wherein activities analogous to carrying out of trade or business are being run. It is evident that material services are being provided to the students lodged in the hostel, which services were being rendered with the help of employees employed therein and the activities were organized by the hostel mess committee with cooperation between the members of the committee and the employees and those activities were being carried on in a manner in which trade or business is being organized. Therefore all standards of an "Industry" are answered. Mere fact that there was no profit motive activity would not take out those activities out of the pale of "Industry" as defined in clause (j) of Section 2 of the Act. Consequently it is concluded that hostel mess committee being run at Maharani Bagh Campus of the School is an "Industry". Issue is therefore, answered in favour of the workman and against the management.

Issue No. 5

23. Out of facts unfolded by the claimant and those admitted by Shri Virender Kumar Paul it came to light that on 29th of September, 2000 the claimant was found lying unconscious in a pool of blood near the boundary wall of the hostel and was removed to AIIMS for treatment. He remained under the treatment of the hospital till 20-11-2000. It was claimed by the workman that he reported for his duty on 4th of May, 2001 and worked till 30-9-2001. He projects that his services were dispensed with without service of any notice or pay in lieu thereof and retrenchment compensation. He sent a notice of demand dated 11-2-2002 seeking reinstatement in service with continuity. Contra to it Shri Paul presents that the claimant did not report for duty after 29-9-2000. He never joined his duties on his discharge from the hospital and abandoned the job. Since he has abandoned the job he is not entitled for his reinstatement.

24. To substantiate his claim Shri Saini has relied photo copy of attendance register which are marked as Ex.WW1/1 to Ex.WW1/5. These photo copies pertain to the month of May, 2001 till September, 2001. When these documents are closely perused it came to light that it were not verified by the Mess Manager. Shri Paul testified that

attendance register was verified by the Mess Manager. His contention in this regard is in consonance with ordinary human behaviour and natural course of events. Attendance of an employee is being verified by a person under whose control he performs his duties. Photo copies of the attendance register, relied by the claimant, are neither verified by the Mess Manager nor bear any mark to show its genuineness. Claimant has not bothered to summon original record from the management in respect of his attendance for the month of May, 2001 till September, 2001. Consequently, it is evident that genuineness of these documents come under cloud.

25. Even otherwise Ex.WW1/1, Ex.WW1/2, Ex.WW1/4 and Ex.WW1/5 relate to two employees, while Ex.WW1/3 relates to six employees. No explanation has been offered by the claimant as to why attendance record in respect of other employees is not there in Ex.WW1/1, Ex.WW1/2, Ex.WW1/4 and Ex.WW1/5. Further more Ex.WW1/4 and Ex.WW1/5 show attendance of Sarvjeet Singh from 21st day of August, 2001 and 21st day of September, 2001. In Ex.WW1/4 attendance of Sarvjeet has been shown for 28th of August but his attendance was not marked when duties came to an end. Same situation is reflected in Ex.WW1/5 also. It seems that Ex.WW1/4 and Ex.WW1/5 are facsimile of each other. Therefore, it is emerging over the record that these documents were fabricated. Ex.WW1/3 happens to be a photo copy, but therein initials of the claimant appears in original. This fact makes it clear that this document was fabricated by the claimant. Under these circumstances these documents cannot be considered to adjudicate the claim made by the claimant. When those documents go off the record, his ocular testimony looses weight, since it is found contrary to ordinary human behaviour. An ordinary prudent man would join his duties, after his discharge from the hospital to claim reimbursement of his medical bills at the earliest.

26. As per the case projected by the claimant, he was discharged from the hospital on 20-11-2000. Discharge certificate Ex.WW1/8 was obtained by him on 30-04-2001. No explanation has been offered by him as to why he had not joined his duties on 21-11-2000. Further more it is not the case of the claimant that on 21-11-2000 he submitted his medical bill before the management seeking reimbursement. As projected by the claimant he had to spent a sum of Rs. 47014.90p on his treatment. Only a sum of Rs. 10000 was given to him by the management on humanitarian grounds. Under these circumstances it was expected of him to file reimbursement claims soon after his discharge from the hospital. No such steps were taken by him, which fact makes it clear that soon after his discharge from hospital the claimant left for his native village. He opted not to join his duties with the management for reasons best known to him.

27. Demand notice Ex.WW1/6 was allegedly served by the claimant on 11-2-2002. In the said demand notice he projects that his wages for the month of December, 2000, May, 2001 to September, 2001 were not paid despite various

demands. It has been mentioned therein that he had submitted his medical bills for reimbursement. No proof of submission of medical bills has been placed over the record. He nowhere explains as to why he opted to serve the demand notice after a lapse of alleged five months. From these facts it is emerging over the record that the claimant has not been able to establish that he joined his duties with the management after his discharge from the hospital in the month of November, 2000 or thereafter.

28. Shri Paul projects that the claimant abandoned his duties since 29-9-2000, the date when he was found lying unconscious in the pool of blood. He abandoned his job and under these circumstances there was no requirement on the part of the management to serve notice or offer pay in lieu thereof to the claimant. It was also not required to pay retrenchment compensation. Claimant has not been able to rebut the facts projected by Shri Paul. When entire facts are considered in the light of ordinary human behaviour, it emerges over that after his discharge from the hospital, the claimant went to his native village. He came to hospital on 30-4-2001 and obtained his discharge certificate. He again went to his native village and thereafter reported to the management in February, 2002. When management showed its inability to take him on job, he served the notice of demand, which is Ex.WW1/6. Therefore it is crystal clear that for a long period the claimant abandoned his job and opted not to report for his duties. It can not be said that his services were dispensed with by the School as claimed by him. These aspects brushes aside his claim of reinstatement.

29. There is other fact of the coin. In Uma Devi (2006) (4) SCC 1 the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the court declined the submissions of the workmen to be made permanent on the post which was held by them in temporary or adhoc capacity for a fairly long spell. The Court ruled thus :

“With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent the distinction between regularization and making permanent, was not emphasized here-can only encourage the State, the modal employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh (1992(4) SCC 118) is to some extent inconsistent with the conclusion in para 45 of the

said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent.”

30. As emerge over the record the claimant was not appointed by the School in pursuance of recruitment rules. His engagement at different intervals had been not in consonance with the recruitment process which the School was bound to follow. In such a situation question for consideration comes as to whether the claimant is entitled for reinstatement in job. The Apex Court in Uma Devi (supra) had laid that when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post when an appointment to the post could be made only by following a proper procedure or selection. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek positive relief of being made a permanent in the post.

31. It is an admitted case of the claimant that when he was taken on job no advertisement was given in the newspaper. His name was not sponsored through the Employment Exchange. Thus it is evident that claimant was employed on the post of bearer without following the normal procedure of recruitment against a public post. He worked there as an ad hoc arrangement. When he abandoned the job, he cannot expect of his reinstatement.

32. It was the claimant who abandoned the job, when he opted not join his duties, after his discharge from the hospital. Though he was discharged on 20-11-2000, yet he obtained his discharge certificate on 30-4-2001. His claim of serving the School from 4th May, 2001 till 30-9-2001 is held to be unfounded. Service of demand notice on 11-2-2002 also belies his claim of termination of his service. All these factors denude legality or justification of his demand of reinstatement in services. He is not entitled for any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

DR. R. K. YADAV, Presiding Officer

Dated: 22-01-2010

नई दिल्ली, 8 फरवरी, 2010

का.आ. 626.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं डब्ल्यू.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 119/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/357/2003-आईआर(सी एम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th February, 2010

S.O. 626.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 119/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Ukni Sub Area of Western Coalfields Limited and their workmen, received by the Central Government on 8-2-2010.

[No. L-22012/357/2003-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE SHRI A. N. YADAV, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/119/2004

Date: 2-2-2010

Petitioner/Party No. 1

The President,
Lal Zanda Coal Mines Mazdoor
Union (CITU), Br. Ukni Pariyojana,
(Wani North Area), Post: Ukni,
Teh. Wani, Distt. Yavatmal (M.S.)

Versus

Respondent/Party No. 2

The Sub Area Manager,
Ukni Sub Area of WCL, Post: Ukni,
Teh. Wani, Distt. Yavatmal (M.S.)

AWARD

(Dated : 2nd February, 2010)

1. The Central Government after satisfying the existence of dispute between the President, Lal Zanda Coal Mines Mazdoor Union (CITU), Yavatmal (Party No. 1) and the Sub Area Manager, Ukni Sub Area of WCL, Yavatmal (Party No. 2) referred the same for adjudication to this Tribunal vide its letter No. L-22012/357/2003-IR (CM-II) dated 3-11-2004 under clause (d) of sub Section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) with the following schedule :

2. "Whether the action of the management of Ukni Sub Area of WCL in directing Sri Rajendra Chorgade, Electrician Helper, Ukni Open Cast Mine, to vacate

the quarter number MQ-325 through their letter number WCL/WNA/SAM/PER/UKNI/PA/139 dated 29-4-2003 is legal and justified? If not, to what relief the concerned workman is entitled?"

3. It was a case in respect of the regularization of the quarter allotted to the Petitioner by the management of WCL, Wani. It comes for hearing on 3-12-2009. The counsel for the petitioner Shri B. Lahiri filed pursis that the parties wants to withdraw the case so as to settle the matter amicably out of Court and he has filed an application requesting to declare the dispute as a resolved and pass the necessary award as per his pursis. I heard him because the pursis is signed by the petitioner and not by any person on behalf of the management Party No. 2. Therefore, it will not be amounting to a settlement and the award as resolved amicably cannot be passed. However, he prayed that it should be treated as disposed of and he does not want to proceed further in the reference. He requested to allow to withdraw the reference. Therefore, he is allowed to withdraw and I pass this no dispute award.

Date: 2-2-2010

A. N. YADAV, Presiding Officer

नई दिल्ली, 8 फरवरी, 2010

का.आ. 627.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 93/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/145/2006-आई.आर.(सी एम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th February, 2010

S.O. 627.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 93/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of Bhanora West Block Colliery of M/s. ECL and their workmen, received by the Central Government on 8-2-2010.

[No. L-22012/145/2006-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, ASANSOL**

Present:

SRI MANORANJAN PATTHAIK, Presiding Officer

Reference No. 93 of 2006

PARTIES:

The Agent, Bhanora West Block Colliery, ECL,
Charanpur, Burdwan.

Vrs.

New Delhi, the 8th February, 2010

The General Secretary, Koyala Mazdoor Congress,
Asansol, Burdwan.

REPRESENTATIVES

For the management : None

For the union (workman) : Sri S. K. Pandey,
Representative of the
Workman

Industry: Coal State : West Bengal

Dated the 12-11-2009

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947): Government of India through the Ministry of Labour vide its letter No. L -22012/145/2006-IR (CM-II) dated 1-11-2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Bhanora West Block Colliery of M/s. ECL in dismissing Sri Nanku Hansda from service w.e.f. 7-5-2003 is legal and justified? If not, to what relief is the workman entitled?”

The dispute between the parties have been settled, the workman tends to withdraw his claims. The counsel for the employer so also the union having raised the dispute has no objection for the same. Accordingly the case is disposed of being withdrawn and Award to that effect be passed.

ORDER

Let an award be and the same is passed in terms of the above. Send the copies of the Award to the Government of India, Ministry of Labour, New Delhi for information and needful action. The reference is accordingly dispose of.

MANORANJAN PATTHAIK, Presiding Officer

नई दिल्ली, 8 फरवरी, 2010

का.आ. 628.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं डब्ल्यू.सी. एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 6/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/337/2007-आई.आर.(सी एम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

S.O. 628.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 6/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Western Coalfields Limited, and their workmen, received by the Central Government on 8-2-2010.

[No. L-22012/337/2007-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, JABALPUR**

NO. CGIT/LC/R/6/2008

Presiding Officer: SHRI MODH. SHAKIR HASAN

Shri Prakash S/o Ratan,
Timberman, Token No. 1418,

Nandan No.1, WCL,
R/O Khapaswami,

Dungaria, Distt. Chhindwara

...Workman/Union

Versus

The Manager,

Nandan Mine No. 2,

The Sub Area Manager, WCL,
Nandan Sub area, PO Nandan,
Distt. Chhindwara (MP)

The Chief General Manager,
Kanhana Area, PO Dungaria,
Distt. Chhindwara (MP)

...Managements

AWARD

Passed on this 28th day of January, 2010

The Government of India, Ministry of Labour vide its Notification No. L -22012/337/2007-IR (CM-II) dated 3-1-2008 has referred the following dispute for adjudication by this tribunal:—

“Whether the action of the management of M/s WCL in dismissing Shri Prakash S/o Shri Rattan from service w.e.f. 4-7-05 is legal and justified? If not, to what relief is the workman entitled?”

2. The case of the workman, in short, is that a chargesheet dated 3-1-2003 for unauthorized absenteeism for duty under clause 26.3 of certified standing orders of the Western Coalfields Ltd. was issued. Thereafter enquiry was constituted against the workman. It is alleged that the principle and procedure of the domestic enquiry was violated by the Enquiry Officer. Enquiry Officer submitted his report after enquiry and the Manager passed the order of dismissal of the workman w.e.f. 4-7-2005. It is alleged that the management had not given second show cause before passing the order of dismissal. The workman had

filed appeal before the appellate authority but no reply was given. It is submitted that the reference be answered in favour of the workman.

3. The management appeared and filed his Written Statement. The case of the management, inter alia, is that the workman was initially appointed as General Mazdoor. He was working as Timberman at Nandan Mine No. 2. It is stated that he was habitual absentee without any intimation, permission or after taking sanction of the leave. Lastly the management served chargesheet to the workman. He submitted his reply. On unsatisfactory reply, the departmental proceeding was started. After enquiry, the Enquiry Officer submitted enquiry report holding him guilty of the charges. The Disciplinary Authority after considering the report and records passed the order of dismissal. It is submitted that the workman is not entitled to any relief.

4. During the course of proceeding, both the parties filed a petition dated 25-1-2010 stating therein that the dispute has been settled between the parties and the award be passed in accordance with the settlement.

5. Perused the settlement dated 3-10-2009. I find that there is no illegality in the settlement arrived between the parties. The following are the terms and conditions of the settlement:-

1. It has been agreed by RKKMS (INTUC) Union, Chandametta and workman himself viz Shri Prakash S/o Ratan, Ex-Timber Man, Nandan Mine No. 2 to withdraw the case No. CGIT/LC/R/6/2008 pending before the Hon'ble CGIT, Jabalpur.

2. On being found medically fit in Medical Examination Shri Prakash S/o Ratan Ex-Timber Mazdoor, Nandan Mine No. 2 will be re-employed afresh as General Mazdoor in Category-I for underground mine of Kanhan Area and he will be paid initial basic of Cat. I (UG) in Kanhan Area.

3. Shri Prakash S/o Ratan shall remain on probation for a period of one year from the date of joining and he has to put in minimum 190 days of attendance in a year at Underground Mine. In case his attendance and general performance is not found satisfactory by the management, his services shall automatically stand terminated without any enquiry or assigning any reason thereof.

4. Shri Prakash S/o Ratan had received gratuity payment after termination from the service, hence he shall not be entitled for continuity of service for the limited purpose of gratuity. This shall be full and final settlement and no further claim whatsoever shall be made in future.

5. The period from the date of his termination till re-employment and joining on his duty will be

treated as dies-non on the principle of no work no pay.

6. He shall have no right to apply for VRS at later stage.

7. On the basis of the above terms and conditions, Hon'ble CGIT, Jabalpur is requested to kindly give a consent award.

6. Considering the above discussions, the award is passed in terms of the settlement without any order to costs.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour and Employment as per rule.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 8 फरवरी, 2010

का.आ. 629.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं 'इन्क्यू.सी. एल.' के प्रबंधन के संबद्ध नियोजकां और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 222/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-2-2010 को प्राप्त हुआ था।

[सं. एल-22012/496/1996-आई.आर.(सी.एम.-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th February, 2010

S.O. 629.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 222/98) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workmen, which was received by the Central Government on 8-2-2010.

[No. L-22012/496/1996-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/222/98

Presiding Officer: SHRI MODH. SHAKIR HASAN

The Vice President,
R.K.K.M.S. (INTUC),

PO: Chandametta,
Distt. Chhindwara (MP)

... Workman/Union

Versus

The General Manager,
WCL, Kanhan Area,
PO Dungaria,
Distt. Chhindwara (MP)

... Management

AWARD

Passed on this 27th day of January 2010

The Government of India, Ministry of Labour vide its Notification No. L -22012/496/96-IR (CM-II) dated 28-9-98 has referred the following dispute for adjudication by this tribunal:-

“Whether the action of the Manager, WCL, Kanhan Area, PO: Dungaria, Distt. Chhindwara (MP) in not promoting to Shri Niyamat Khan, Clerk Grade-I, Sukri Colliery to the post of Special Grade clerk is justified? If not, to what relief the workman is entitled?”

2. The Union/workman appeared in the case but did not file statement of claim in spite of reasonable time given to the workman. Thereafter the Union/workman absented and the then Tribunal proceeded ex parte against the workman on 18-2-2008.

3. The management appeared and when statement of claim was not filed by the workman, the management filed his written statement. The case of the management in short is that the workman raised this dispute claiming therein that he should be promoted to the post of Special Grade Clerk on the ground that one Ram Kumar and Parvez Panthakey were given promotion to the post of Special Grade/Clerk. It is stated that the promotion cannot be claimed as a right, rather it is based on availability of posts, administrative requirements, eligibility of the concerned workman and recommendation of the DPC. The workman was initially appointed in a lowest grade and was given promotion from time to time. He was promoted in Grade I on 27-5-91. It is stated that the seniority from Grade II to Grade I is maintained at unit-wise and Grade I to Special Grade is maintained at Area level. This workman was promoted in Grade I after the above two named workmen. This workman was in different unit as such he cannot claim promotion on the basis of the promotion of the above two workmen in special grade. Under the circumstances, the workman is not entitled to any relief.

4. The point issue for determination is as to whether the action of the Manager, WCL, Kanhan Area in not promoting Shri Niyamat Khan, Clerk Grade-I to the post of Special Grade Clerk is justified.

5. To prove the case, the management has examined only one witness. Management witness, Shri D. K. Gowami

was working as Dy. CPM in Kanhan Area. He has stated that the promotion is given on availability of posts, administrative requirements, eligibility and recommendation of the DPC and the workman Shri Niyamat Khan was promoted as Clerk Grade-I at Sukri Colliery. He has stated that the seniority upto Grade-I is maintained at Unit level. Thereafter, the seniority is given based on Area level. He has stated that Shri Ram Kumar Srivas and Parvez Panthankey were senior at Area level in Clerk Grade-I. The management has filed cadre scheme which is marked as Exhibit M-2. This is filed to show as to how the promotion is to be given. The management has also filed the chart of all the three workmen which is marked as Exhibit M-7. The said chart clearly shows that Shri Khan was promoted in Clerk Grade-I on 27-5-91 whereas other two workmen were promoted prior to him. This clearly shows that the action of the management in not promoting Shri Khan in Special Grade Clerk is justified. Accordingly the issue is decided in favour of the management.

6. In the result, the award is passed ex parte against the workman without any order to costs.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour and Employment as per rule.

MOHD. SHAKIR HASAN, Presiding Officer

शुद्धि-पत्र

नई दिल्ली, 8 फरवरी, 2010

का.आ. 630.—श्रम एवं रोजगार मंत्रालय द्वारा दिनांक 3 फरवरी, 2010 को जारी की गई समसंख्यक अधिसूचना में तीसरी पंक्ति में “नियंत्रणाधीन” शब्द के बाद “कर्मचारी भविष्य निधि संगठन के” शब्द जोड़े जाएं।

[संख्या-ई-11017/1/2006-रा.भा.नी.]

के. एम. गुप्ता, आर्थिक सलाहकार

CORRIGENDUM

New Delhi, the 8th February, 2010

S.O. 630.—In the notification of Ministry of Labour and Employment of even number dated 3rd February, 2010 in the third line after the words “under control” the words “of Employees Provident Fund Organisation” be added.

[No. E-11017/1/2006-RBN]

K. M. GUPTA, Economic Advisor